राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 23 अक्तूबर, 2020 / 01 कार्तिक, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 24th March, 2020

No. Shram(A) 6-2/2020 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	59/18	Madan Lal	M/s Horizon Polymers	17-02-2020
2.	98/16	Sher Singh	E. E. I&PH Padhar	18-02-2020
3.	94/16	Dhani Ram	E. E. I&PH Padhar	18-02-2020
4.	96/16	Manohar Lal	E. E. I&PH Padhar	18-02-2020
5.	95/16	Beli Ram	E. E. I&PH Padhar	19-02-2020
6.	97/16	Govind Ram	E. E. I&PH Padhar	19-02-2020
7.	93/16	Kesar Singh	E. E. I&PH Padhar	20-02-2020
8.	99/16	Hoshiar Singh	E. E. I&PH Padhar	20-02-2020
9.	350/15	Rani Devi	E. E. H.P.P.W.D. Dharampur	22-02-2020
10.	768/16	Bihari Lal	E. E. HPPWD, Nurpur	24-02-2020
11.	285/15	Tek Chand	D.F.O. Suket	24-02-2020
12	179/17	Joginder Singh	D.F.O. Joginder Nagar	24-02-2020
13.	770/16	Kanshi Ram	E. E. HPPWD, Nurpur	25-02-2020
14	240/14	Sunil Kumar	M/s GVK EMRI	27-02-2020
15	248/14	Rajesh Kumar	M/s GVK EMRI	28-02-2020
16	247/14	Rajneesh Kumar	M/s GVK EMRI	28-02-2020
17	244/14	Hem Raj	M/s GVK EMRI	29-02-2020
18.	41/18	Hoshiyar Singh	E. E. HPPWD, Jawali	29-02-2020

By order,

NISHA SINGH, IAS

Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 59/2018

Date of Institution : 06.06.2018

Date of Decision : 17.02.2020

Shri Madan Lal s/o Shri Harbans Lal, r/o V.P.O. Rajwal, Tehsil Mukerian, District Hoshiarpur, Punjab. . .*Petitioner.*

Versus

The Managing Director, M/s Horizon Polymers, Plot No. 192 to 195, 212 to 219, Phase-III, Industrial Area, Sansarpur Terrace, District Kangra, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.
: Sh. Rajat Chaudhary, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of services of Shri Madan Lal s/o Shri Harbans Lal, r/o V.P.O. Rajwal, Tehsil Mukerian, District Hoshiarpur, Punjab during 24-10-2017 (as alleged by workman) by the Managing Director, M/s Horizon Polymers, Plot No. 192 to 195, 212 to 219, Phase-III, Industrial Area, Sansarpur Terrace, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/ management?"

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte.*

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

> "(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

> "10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

5. Rule 22 reads thus:—

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 24.10.2017 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 98/2016

Date of Institution : 04.3.2016

Date of Decision : 18.02.2020

Shri Sher Singh s/o Shri Lalu Ram, r/o Village Algan, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Sher Singh s/o Shri Lalu Ram, r/o Village Algan, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. during August, 2000 by the Executive Engineer, I.&P.H., Division Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 17 days, 92 days and 138 days in year, 1998, 1999 and 2000 respectively and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 17 days, 92 days and 138 days in year, 1998, 1999 and 2000 respectively and delay of more than 13 years in raising the industrial dispute vide demand notice dated nil received in the Labour Office Mandi on 17-9-2014, what amount of back

wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked to the satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such it was no fault of the petitioner. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked as a workman on daily waged basis *w.e.f.* 6.12.1998 uptil 31.7.2000. However, it is asserted that the workman had worked intermittently with the respondent during this period and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner had not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute vide demand notice dated 1.9.2015 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹ 25,000/-
Issue No. 3	: No
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sher Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1998. He owns some land, which he cultivates. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. He specifically denied that after July, 2000 he had left the work of his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days

were regularized. No notice of re-engagement was ever given to the petitioner when new fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year, were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work *w.e.f.* 1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/C produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 6.12.1998, by the respondent and that he had worked as such intermittently uptil July, 2000.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2000. No mandays

chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 166 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali** vs. **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose names figure at serial no.496 to 520 of the list were engaged from the month of January, 1999 onwards uptil the month of June, 2000. Admittedly, as per this list all these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 6.12.1998 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial no.496 to 520 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department after the disengagement of the petitioner, which as per the reference took place in August, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All the persons whose names figure at serial No. 450 to 452, 454 to 473 and 521 to 543 of the list were either engaged in January, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 241 days as a non-skilled worker. His services, as per the reference were

disengaged in August, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 17.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 94/2016

Date of Institution : 04.3.2016

Date of Decision : 18.02.2020

Shri Dhani Ram s/o Shri Karmu, r/o Village Algan, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Dhani Ram s/o Shri Karmu, r/o Village Algan, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. during August, 2000 by the Executive Engineer, I.&P.H., Division Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 17 days, 28 days and 138 days in year, 1998, 1999 and 2000 respectively and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 17 days, 28 days and 138 days in year, 1998, 1999 and 2000 respectively and delay of more than 13 years in raising the industrial dispute *vide* demand notice dated nil received in the Labour Office Mandi on 17-09-2014, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked to the satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such it was no fault of the petitioner. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked

as a workman on daily waged basis *w.e.f.* 6.12.1998 uptil 31.7.2000. However, it is asserted that the workman had worked intermittently with the respondent during this period and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner had not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute *vide* demand notice dated 1.9.2014 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹25,000/-
Issue No. 3	: No
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Dhani Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1998. These days he does agricultural chores. He owns some land. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, he was given the work only uptil July, 2000. He specifically denied that after July, 2000 he had left the work of his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days were regularized. No notice of re-engagement was ever given to the petitioner when new fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year, were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work *w.e.f.* 1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/C produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged 6.12.1998, by the respondent and that he had worked as such intermittently uptil July, 2000.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 166 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose names figure at serial No.496 to 520 of the list were engaged from the month of January, 1999 onwards uptil the month of June, 2000. Admittedly, as per this list all these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 6.12.1998 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial no.496 to 520 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department after the disengagement of the petitioner, which as per the reference took place in August, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All the persons whose names figure at serial No. 450 to 452, 454 to 473 and 521 to 543 of the list were either engaged in January, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr.*** *Vs.* ***Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajaypb Singh*** *vs.* ***Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The

observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 183 days as a non-skilled worker. His services, as per the reference were disengaged in August, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 17.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 96/2016

Date of Institution : 04.3.2016

Date of Decision : 18.02.2020

Shri Manohar Lal s/o Shri Ganga Ram, r/o Village Kalehar, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Shri Manohar Lal s/o Shri Ganga Ram, r/o Village Kalehar, P.O. Kataula, Tehsil Sadar, District Mandi, H.P. during July, 2000 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 84 days and 110 days in year, 1999 and 2000 respectively and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 84 days and 110 days in year, 1999 and 2000 respectively and delay of more than 13 years in raising the industrial dispute vide demand notice dated 09-09-2014, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked to the satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such there was no fault of his. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked as a workman on daily waged basis, but it was claimed that he had worked intermittently *w.e.f.* 6.2.1999 to 30.6.2000 and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner has not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute vide demand notice dated 1.9.2014 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during July, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR* .

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹25,000/-
Issue No. 3	: No
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Manohar Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1998. These days he does agricultural chores. He owns some land. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, he was given the work only uptil July, 2000. He specifically denied that after July, 2000 he had left the work of his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who

had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days were regularized. No notice of re-engagement was ever given to the petitioner when new/fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work *w.e.f.* 1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. However, the petitioner claimed that he had initially been engaged by the respondent in the year 1998, whereas the stand taken by the respondent is that the services of the petitioner were engaged on 6.2.1999. No doubt, the petitioner in his substantive evidence maintained that he had been engaged in the year 1998, but the respondent has proved on record his mandays chart as Ex. RW1/C. It was not disputed by the petitioner at the time when the same was exhibited on record by the respondent. Its perusal discloses that the services of the petitioner were initially engaged by the respondent on February 6, 1999 and that he had worked as such uptil June, 2000. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1998 and that he had worked uptil July, 2000, as claimed.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of July, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 138 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose names figure at serial No. 500 to 520 of the list were engaged from the month of March, 1999 onwards uptil the month of June, 2000. Admittedly, as per this list all these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 6.2.1999 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial No.500 to 520 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department after the disengagement of the petitioner, which as per the reference took place in July, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All

the persons whose names figure at serial no.450 to 452, 454 to 473 and 521 to 543 of the list were either engaged in January, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and

thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 194 days as a non-skilled worker. His services, as per the reference were disengaged in July, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 9.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 95/2016

Date of Institution : 04.3.2016

Date of Decision : 19.02.2020

Shri Beli Ram s/o Shri Fagnu, r/o Village Bambola, P.O. Tihri, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Beli Ram s/o Shri Fagnu, r/o Village Bambola, P.O. Tihri, Tehsil Sadar, District Mandi, H.P. during August, 2000 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 14 days, 48 days and 27 days in 1998, 1999 and 2000 respectively and has raise his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 14 days, 48 days and 27 days in 1998, 1999 and 2000 respectively and delay of more than 13 years in raising the industrial dispute vide demand notice dated nil received in the Labour Office Mandi on 17-09-2014, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster-roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked to the entire satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such it was no fault of the petitioner. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked as a workman on daily waged basis *w.e.f.* 6.12.1998 uptil 31.7.2000. However, it is asserted that the workman had worked intermittently with the respondent *w.e.f.* 01.06.2000 uptil 31.7.2000 and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner had not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute vide demand notice dated 1.9.2014 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹15,000 /-
Issue No. 3	: No
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹15,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Beli Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1998. These days he does agricultural chores. He owns some land. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, he was given the work only uptil July, 2000. He specifically denied that after July, 2000 he had left the work of his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days were regularized. No notice of re-engagement was ever given to the petitioner when new fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year, were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work *w.e.f.*

1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/C produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 6.12.1998, by the respondent and that he had worked as such intermittently uptil July, 2000.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 42 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar

months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose names figure at serial No.496 to 520 of the list were engaged from the month of January, 1999 onwards uptil the month of June, 2000. Admittedly, as per this list all these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 6.12.1998 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial No. 496 to 520 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/ department after the disengagement of the petitioner, which as per the reference took place in August, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All the persons whose names figure at serial No.450 to 452, 454 to 473 and 521 to 543 of the list were either engaged in January, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer*** *vs.* ***Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited*** *vs.* ***Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another*** *vs.* ***Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr.*** *vs.* ***Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 89 days as a non-skilled worker. His services, as per the reference were disengaged in August, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 17.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 97/2016

Date of Institution : 04.3.2016

Date of Decision : 19.02.2020

Shri Govind Ram s/o Shri Thakur Dass, r/o Village Nanhani, P.O. Segli, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Govind Ram s/o Shri Thakur Dass, r/o Village Nanhani, P.O. Segli, Tehsil Sadar, District Mandi, H.P. during August, 2000 by the Executive Engineer, I.&P.H., Division Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 25 days, 191 days, 25 days, 52 days, 76 days, 17 days, 95 days, and 83 days in years, 1993, 1994, 1995, 1996, 1997, 1998, 1999 and in year 2000 respectively and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 25 days, 191 days, 25 days, 52 days, 76 days, 17 days, 95 days, and 83 days in years, 1993, 1994, 1995, 1996, 1997, 1998, 1999 and in year 2000 respectively and delay of more than 13 years in raising the industrial dispute *vide* demand noticed\ dated 09-09-2014, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked to the entire satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such it was no fault of the petitioner. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked as a workman on daily waged basis *w.e.f.* 6.12.1998 uptil 31.7.2000. It is asserted that the

workman had worked intermittently with the respondent *w.e.f.* 21.4.1993 uptil 31.7.2000 and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner had not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute *vide* demand notice dated 1.9.2014 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Partly affirmative
Issue No.2	: Lump sum compensation of ₹ 70,000/-
Issue No.3	: No
Issue No.4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹70,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Govind Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1993 *i.e.* 21.8.1993. These days he does agricultural chores. He owns some land. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, he was given the work only uptil July, 2000. He specifically denied that after July, 2000 he had left the work of his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days were regularized. No notice of re-engagement was ever given to the petitioner when new fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year, were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work *w.e.f.* 1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/C produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged 21.4.1993, by the respondent and that he had worked as such intermittently uptil July, 2000.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had

abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 122 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose

names figure at serial No. 25 to 53, 119 to 125, 150 to 159, 166 to 172, 174, 175, 188, 189, 213, 230 to 243, 296 to 301, 309 to 311, 378, 379, 474 to 477, 487 to 492, 494 to 521 of the list were engaged from the month of June, 1993 onwards uptil the month of July, 2000. Admittedly, as per this list all these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 21.4.1993 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial No. 25 to 53, 119 to 125, 150 to 159, 166 to 172, 174, 175, 188, 189, 213, 230 to 243, 296 to 301, 309 to 311, 378, 379, 474 to 477, 487 to 492, 494 to 521 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department after the disengagement of the petitioner, which as per the reference took place in August, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All the persons whose names figure at serial no.522 to 543 of the list were either engaged in June, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr.*** *Vs.* ***Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh*** *vs.* ***Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The

observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 564 days as a non-skilled worker. His services, as per the reference were disengaged in August, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 09.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* the respondent is hereby directed to pay a compensation of `70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 93/2016

Date of Institution : 04.3.2016

Date of Decision : 20.02.2020

Shri Kesar Singh s/o Shri Lala Ram, r/o Village Bambola, P.O. Segli, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Shri Kesar Singh s/o Shri Lala Ram, r/o Village Bambola, P.O. Segli, Tehsil Sadar, District Mandi, H.P. during August, 2000 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 17 days, 77 days and 83 days in year, 1998, 1999 and 2000 respectively and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 17 days, 77 days and 83 days in year, 1998, 1999 and 2000 respectively and delay of more than 13 years in raising the industrial dispute vide demand notice dated 09-09-2014, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had worked to the satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such it was no fault of his. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked as a workman on daily waged basis *w.e.f.* 6.12.1998 uptil 31.7.2000. However, it is asserted that the workman had worked intermittently with the respondent during this period and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner had not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute vide demand notice dated 1.9.2014 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during August, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹25,000/-
Issue No. 3	: No
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kesar Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1998. These days he does agricultural chores. They are three brothers and having 10-12 bighas of land. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, he was given the work only uptil July, 2000. He specifically denied that after July, 2000 he had left the work of

his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days were regularized. No notice of re-engagement was ever given to the petitioner when new/fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year, were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work *w.e.f.* 1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/C produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 6.12.1998, by the respondent and that he had worked as such intermittently uptil July, 2000.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 122 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose names figure at serial No. 496 to 520 of the list were engaged from the month of January, 1999 onwards uptil the month of June, 2000. Admittedly, as per this list all these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 6.12.1998 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial no.496 to 520 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/ department after the disengagement of the petitioner, which as per the reference took place in August, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All the persons whose names figure at serial No. 450 to 452, 454 to 473 and 521 to 543 of the list

were either engaged in January, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajaypb Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in

case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 177 days as a non-skilled worker. His services, as per the reference were disengaged in August, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 9.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No.3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Date of Institution : 04.3.2016

Date of Decision : 20.02.2020

Shri Hoshiar Singh s/o Shri Kishan Chand, r/o Village Halgarh, P.O., Segli, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I&PH Division, Padhar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.S. Guleria, Adv.

For the respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Hoshiar Singh s/o Shri Kishan Chand, r/o Village Halgarh, P.O. Segli, Tehsil Sadar, District Mandi, H.P. during August, 2000 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 57 days in year 2000 and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 57 days in year, 2000 and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily wager on muster roll basis in the year 1998. His services were terminated/retrenched by the respondent *w.e.f.* 1.8.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as

'the Act' for short). The petitioner had worked to the satisfaction of his superiors and was ready to serve his employer continuously. He had never left the work, but his services were time and again interrupted on account of lock out or cessation of work and as such there was no fault of his. Sufficient work was available with the respondent but the respondent had given fictional breaks to him. Persons junior to him were retained and were allowed to complete 240 days in a year. After the termination of the services of the petitioner, new/fresh hands, namely, Smt. Subhadra and others were engaged and all were allowed to complete 240 days and his (petitioner's) services were terminated without complying with the provisions of the Chapter V-B and Section 25-G of the Act. While retaining the juniors, no notice under Section 25-H had been given to the petitioner by the respondent. The act of the respondent was unconstitutional, malafide, unjustified and against the mandatory provisions of law. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that the petitioner had worked as a workman on daily waged basis, but it was claimed that he had worked intermittently *w.e.f.* 6.12.1999 to 31.7.2000 and thereafter had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months. No artificial breaks had ever been given to the petitioner by the respondent. He had left the job in August, 2000. As per Section 25-B of the Act, the petitioner has not continuously worked with the respondent. Persons, namely, S/Sh./Smt. Prakesh Chand, Sher Singh, Vidya Devi, Resan Devi, Sohan Singh and Pan Chand were never engaged by the respondent. It is asserted that after the workman had left the job of his own, no person had been engaged in his place. The petitioner had raised his industrial dispute vide demand notice dated 1.9.2014 after about 14 years, which is time barred. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.10.2017:

1. Whether termination of the services of petitioner by the respondent during July, 2000 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly affirmative
Issue No. 2	: Lump sum compensation of ₹15,000/-
Issue No. 3	: No
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹15,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Hoshiar Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he stated that he was engaged in the year 1998. These days he does agricultural chores. He owns some land. He admitted that he had worked intermittently uptil July, 2000. Further, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, he was given the work only uptil July, 2000. He specifically denied that after July, 2000 he had left the work of his own sweet will. He admitted that he had not worked for 240 days in any calendar year. He denied that S/Sh./Smt. Prakash Chand, Sher Singh, Vidya Devi, Rekha Devi, Sohan Singh, Hem Singh and Pan Chand were not engaged by the respondent. Further, he denied that only those persons have been regularized who had worked continuously. Self stated that juniors to him were kept at work and thereafter their services have been regularized. He denied that he is making a phoney statement.

11. Conversely, Shri Rajesh Kumar Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the year 2000 the department had engaged workers. Volunteered that, casual labour had been kept and those who had completed 240 days were regularized. No notice of re-engagement was ever given to the petitioner when new/fresh hands were engaged by the department. Self stated that the workers who had not completed 240 days in each calendar year were not served any notice. He specifically denied that the petitioner had been regularly coming to work and that artificial/fictional breaks were given to him by the department. He also denied that the petitioner had been removed from work w.e.f. 1.8.2000 by the department. Further, he denied that the petitioner along-with other six workers had been removed from work the same day so that fresh hands could be engaged.

12. Ex.RW1/B is the copy of Notification dated 12th February, 2016.

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. It is admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. However, the petitioner claimed that he had initially been engaged by the respondent in the year 1998. No doubt, the petitioner in his substantive evidence maintained that he had been engaged in the year 1998, but the respondent has proved on record his mandays chart as Ex. RW1/C. It was not disputed by the petitioner at the time when the same was exhibited on record by the respondent. Its perusal discloses that the services of the petitioner were initially engaged by the respondent on 1st June, 2000 and that he had worked as such uptil July, 2000. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1998, as claimed.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajesh Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of July, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 57 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case

titled as ***Mohd. Ali** vs. **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the petitioner is a copy of detail of daily waged workers as it stood on 31.12.2004 of I&PH Division Padhar, as Ex.PW1/B. It reveals that the persons whose names figure at serial No. 520 & 521 of the list were engaged on 15.6.2000 and 1.7.2000 respectively. Admittedly, as per this list both these persons are shown to be serving the respondent/department till 31.12.2004. Indisputably, all these persons were engaged after the engagement of the services of the petitioner, which as discussed above had taken place on 1.6.2000 as per Ex.RW1/C. There is nothing on record to show that all these persons whose names figure at serial no.520 and 521 of the list (Ex.PW1/B) were senior to the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department after the disengagement of the petitioner, which as per the reference took place in August, 2000. The latter has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

22. A perusal of Ex.PW1/B would also reveal that a number of new/fresh hands were engaged by the respondent/department after the termination of the services of the petitioner. All the persons whose names figure at serial No. 523 to 541 and 543 of the list were either engaged in September, 2001 and thereafter uptil October, 2004. Not only this, Shri Rajesh Kumar Sharma (RW1) in his cross-examination clearly admitted that after the year 2000 a number of new/fresh hands had been engaged by the department. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Rajesh Kumar Sharma (RW1) was categorical in his cross-examination that no notice of re-engagement had ever been served upon the petitioner at the time of re-engaging new/fresh hands.

23. Since, the provisions of Sections 25-G and 25-H of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under these Sections of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.***

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 57 days as a non-skilled worker. His services, as per the reference were disengaged in August, 2000 and had raised the industrial dispute by issuance of demand notice after about ***thirteen years*** *i.e.* demand notice was given on 9.9.2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the

aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* the respondent is hereby directed to pay a compensation of `15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 350/2015

Date of Institution : 05.8.2015

Date of Decision : 22.02.2020

Smt. Rani Devi w/o Shri Balbir Singh, r/o Village Taroon, P.O. Samour, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Smt. Navina Rahi, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Smt. Rani Devi w/o Shri Balbir Singh, r/o Village Taroon, P.O. Samour, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 30-09-2000 by the Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that she was engaged as a daily rated beldar by the respondent on 17.11.1998 and she had worked as such uptil 29.9.2000. She was wrongly and illegally retrenched by the respondent on 30.9.2000. No seniority list has been prepared by the respondent and juniors to the petitioner have been retained. New/fresh hands have also been engaged. Principle of 'last come first go' has been violated by the respondent. The retrenchment of the petitioner is against the provisions of Sections 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Even the provisions of Section 25-F of the Act have not been complied with by the respondent. Juniors, namely, S/Sh./Smt. Savitri , Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishna Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh, who were retained, have been regularized by the respondent *w.e.f.* 28.11.2008. Sufficient work and funds were available with the respondent at the time of terminating the services of the petitioner. The petitioner had completed 240 days in the preceding twelve calendar months prior to her illegal retrenchment. Since then she is unemployed and is having no source of income to make both the ends meet. Many representations were made by her to the respondent to re-engage her, but without success. She issued demand notice. State Government after the receipt of the failure report from the Conciliation Officer, made the present reference to this Court. Earlier, reference no.39/2012 titled as Smt. Rani Devi vs. Executive Engineer, HPPWD, Dharampur had to be withdrawn by the petitioner as her date of termination had wrongly been mentioned in it. 1857 workers of Dharampur Division were retrenched on 9.2.2004 and 1087 on 8.7.2005. Most of them have been re-engaged by the department. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition suffers from the vice of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the month of November, 1998 and that she had worked intermittently uptil September, 2000. Thereafter, she had left the job of her own sweet will. She had not completed 240 days in any calendar year. The respondent had not violated any of the provisions of the Act. Only those workers were regularized who had continuously worked and had completed 240 days in each calendar year. Demand notice was raised by the petitioner after about 14 years only in the year 2013. During this period she had never approached the respondent. Hence, it is prayed that the claim petition be dismissed.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 29.3.2016:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 30-09-2000 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition suffers from vice of delay and laches as alleged?. . *OPR.*

Relief :

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Partly Yes
Issue No. 2	: Lump sum compensation of `70,000/-.
Issue No. 3	: Negative
Issue No. 4	: Negative
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹70,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Rani Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim.

In the cross-examination, she admitted that she was engaged in the month of November, 1998. She also admitted that she had worked uptil the year 2000. She denied that she had worked intermittently. She further denied that she had left the work of her own sweet will in the year 2000. She also denied that no junior to her had been kept at work by the department. She admitted that she had raised the demand notice in the year 2009. She also admitted that she had not made any representation from the year 2000 uptil the year 2009. Volunteered that, she had made verbal requests to the department. She admitted that she does agricultural chores. She denied that she is making a phoney statement.

11. No evidence was led by the respondent and his evidence stood closed under the orders of the Court, as despite being afforded ample and exceptional opportunities, he had failed to lead his evidence.

12. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department as a daily waged beldar from November, 1998 uptil September, 2000. The respondent has produced the mandays chart of the petitioner on record. Although, it has not been exhibited on record, but as the same is not disputed by either of the parties so, it can be looked into. Its perusal discloses that the services of the petitioner were initially engaged in the month of November, 1998, by the respondent and that she had worked as such intermittently uptil September, 2000.

13. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job.

14. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as ***Narain Singh*** *vs.* ***The State of Himachal Pradesh & Ors., 2016 (3) her L.R. 1875*** that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as ***State of Himachal Pradesh & another*** *vs.* ***Shri Partap Singh, 2017 (1) her L.R. 286***, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. The respondent has not led any evidence on the file evidencing that the petitioner had left/abandoned the job. Thus, the plea of abandonment put forth by the respondent/employer is not established.

15. In para No. 4 of the statement of claim, the petitioner has categorically pleaded that she had completed 240 days of work in a block of twelve calendar months preceding the date of her termination, *i.e.* 30.9.2000. This fact has not been specifically denied by the respondent in the corresponding para of the reply. Moreover, the petitioner (PW1) stated in the examination-in-chief that she had completed 240 days of service in a block of twelve calendar months anterior to the date of her retrenchment. This fact has not been challenged by the respondent at the time of the cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side.

16. Section 25-F of the Act postulates as under:—

> ***"25-F. Conditions precedent to retrenchment of workmen.***—*No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
>
> (*b*) *the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

17. There is not an iota of evidence on record to show that the petitioner/workman was paid the compensation at the time of retrenchment as envisaged under Section 25-F (b) of the Act. For this reason, the final termination of the services of the petitioner by the respondent *w.e.f.* 30.9.2000 is patently wrong and illegal.

18. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

19. It is claimed by the petitioner that at the time of termination of her services, persons junior to her were retained in service by the respondent. A detail of such persons has been given in para 3 of the statement of claim. The respondent has refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record nor any other witness examined so as to show that the persons named in the statement of claim and in her affidavit by the petitioner were junior to her and who had been retained by the respondent at the time of the termination of her services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

20. The petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also her cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after her retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to her allegation that new/fresh hands were appointed after the termination of her services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

21. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

22. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

23. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another*** vs. ***Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by her almost after 15 years of his alleged termination, she was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,*** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by her after 25 years of the alleged termination, she had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 567½ days as a non-skilled worker. Her services, as per the reference were disengaged on 30.9.2000 and she had raised the industrial dispute by issuance of demand notice after about ***nine years*** *i.e.* demand notice was given on 30.9.2009. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the

aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

24. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

25. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Issue No. 5 (Relief) :

26. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 768/2016

Date of Institution : 19.11.2016

Date of Decision : 24.02.2020

Shri Bihari Lal s/o Shri Taru Ram, r/o Village and P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. . .*Petitioner.*

Versus

1. The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P.

2. The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P.

. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the alleged termination of services of Shri Bihari Lal, s/o Shri Taru Ram r/o Village and P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P., (ii) The Executive Engineer, Jawali Division, HPPWD Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after 21 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 13-06-2011 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. During the pendency of the case, the petitioner, namely, Shri Bihari Lal had expired. The case was listed for filing of the application to bring on record the legal representatives of the deceased petitioner but, however, neither the legal representatives nor their counsel has put in appearance before this Tribunal despite the case being called several times since morning. Hence, despite due knowledge, the legal representatives have remained *ex parte.*

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

> "(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

5. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the legal representatives of the deceased workman nor their counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. Since the legal representatives of the deceased petitioner, namely, Shri Bihari Lal have not put in appearance before this Tribunal nor any application for bringing on record of the legal representatives has been filed, hence, the reference stands abated. Even otherwise, it was required to be pleaded and proved on record that the termination of the services of deceased petitioner in the year 1990 by the respondents was without complying with the provisions of the Industrial Disputes Act, 1947, and thus, illegal and unjustified. There is neither any pleading nor any evidence to this effect on record on the part of the legal representatives. They, as discussed above are failed to put in appearance before this Tribunal. So, this reference is also answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 285/2015

Date of Institution : 13.7.2015

Date of Decision :24.02.2020

Shri Tek Chand s/o Shri Kundan Lal, r/o Village Bhakha, P.O. Nihari, District Mandi, H.P.
. .*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent(s) : Smt. Navina Rahi, Dy. D.A.

ॉ।त्क

The reference given below has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Tek Chand s/o Shri Kundan Lal, r/o Village Bhakha, P.O. Nihari, District Mandi, H.P. during April, 2009 to May, 2012 and finally during June, 2012 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent in the year 2005 and had worked as such uptil May/June, 2012. A number of juniors were engaged by the department after his joining the service. Despite the availability of work and funds, he was given fictional breaks from time to

time. His juniors were retained and their names mentioned in the seniority list. His name was not entered in such list. He had been sincerely doing his duties and had been working continuously. However, his services were illegally terminated orally in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). New/fresh hands were engaged after his retrenchment. His juniors, who were retained, were later work-charged/regularized by the respondent. The principle of 'last come first go' had not been adhered to. The service conditions of the petitioner had been changed unilaterally by the department. Earlier he was engaged on muster rolls and subsequently employed on work order/bill basis, without any notice. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is in-fructuous. The contents of the petition were denied on merits. It was asserted that daily wagers were engaged depending upon the work and availability of funds. Their seniority is being maintained by the department. The principle of 'last come first go' is being followed. The petitioner had been engaged in Jhungi Forest Range, Suket Forest Division in the month of April, 2009 and had worked intermittently uptil August, 2015. It is denied that his services were terminated in June, 2012 by the respondent. No fictional breaks were ever given to him by the respondent. He had been coming to work at his own convenience. No person junior to him was engaged. He had not completed 240 days in any calendar year to fulfill the conditions of Section 25-B of the Act. So, there was no need to serve any notice upon him under Section 25-F of the Act. The respondent had also not violated the provisions of Sections 9-A and 10 of the Act. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 29.3.2016:

1. Whether time to time termination of the services of petitioner during April, 2009 to May, 2012 by the respondent is illegal and unjustified as alleged? . .*OPP.*

2. Whether final termination of services of the petitioner by the respondent during June, 2012 is illegal and unjustified as alleged? . .*OPP.*

3. If issue No. 1 & issue No. 2 or both are proved in affirmative to what relief petitioner is entitled to? . .*OPP.*

4. Whether the present claim petition/reference is not maintainable in the present form as alleged? . .*OPR.*

5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . *OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. At this stage, I will like to highlight that on 4th December, 2017, the learned counsel for the petitioner/claimant made a statement that he does not press the relief qua final termination in reference petition of the petitioner by the respondent.

8. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Not pressed
Issue No. 3	: Partly affirmative
Issue No. 4	: No
Issue No. 5	: Not pressed
Relief.	: Petition is partly allowed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 3 :

10. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. The petitioner, namely, Shri Tek Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that the work in forest department is seasonal. However, he admitted that as and when he had approached the department, he was provided with the work. Volunteered that, less days have been shown by the the department. He also admitted that in the years 2013, 2014 and 2015, he had worked intermittently with the department. He denied that he was never removed from work by the department in June, 2012. He also denied that no fictional breaks were given to him by the department. Further, he denied that he had not worked for 240 days or more. He also denied that no junior to him was kept at work by the department. He specifically denied that only those workers have been regularized by the department, who had worked continuously and had fulfilled the conditions of the policies of the government for regularization. He owns land, which he cultivates. He denied that he is making a phoney statement.

12. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that seniority list Ex.PA has been issued by the department. Volunteered that, it is tentative. He admitted that the name of the petitioner is not there in Ex.PA. He also admitted that the person whose name figures at serial no.113 of Ex.PA is

junior to the petitioner. As per the record, no departmental proceedings were initiated against the petitioner. He denied that intentional breaks in service were provided to the petitioner time and again. Self stated that he himself had not been coming to work. He feigned ignorance that before the Conciliation Officer assurance was given by the department that the petitioner would be kept at work on priority basis and that his name would also be entered in the seniority list as per the mandays chart. He was not aware that on those very conditions a compromise had been effected in between the department and one Yashwant s/o Shri Mani Ram. He was also not aware that as per the compromise Yaswant was given the continuity and was also regularized by the department. He admitted that Ex.PB is the copy of regularization order. He also admitted that as per the seniority list Ex.PA the date of initial appointment of Baldev s/o Shri Panna Lal is reflected as 1.1.2007. He specifically denied that despite the availability of work juniors were kept and regularized by the department.

13. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

14. It is the admitted case of the parties that after June, 2012, the petitioner is serving the respondent/department. As already mentioned, there is no controversy between the parties regarding the alleged final termination of the services of the petitioner by the respondent in the month of June, 2012. The only dispute which remains between the parties and requires thrashing at the hands of this Court is as to whether artificial/fictional breaks in service were provided to the petitioner by the respondent from April, 2009 to May, 2012 or not?

15. The mandays chart Ex.RW1/B (also Ex.PW2/A-2) clarifies that the services of the petitioner were initially engaged as a daily wager in the month of April, 2009 and he is shown to have worked in the month of August, 2015 as well. This document apparently shows that the petitioner had not been regularly engaged by the respondent. Rather, he had been engaged for a limited number of days in a month. Tentative seniority list of daily labourers of Suket Forest Division as it stood on 31.3.2014 does not reflect the name of the petitioner. No plausible explanation is forthcoming from the mouth of respondent (RW1) as to why the name of the petitioner is not there in the said list. It is merely stated by him that the petitioner had not completed 240 days in a year.

16. The defense of the respondent is that the petitioner was engaged for seasonal works, as and when available with the respondent and subject to the availability of budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and work. Then, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department has been declared as a seasonal industry, as required under the law.

17. Now, I proceed to decide as to whether intentional breaks in service were provided to the petitioner by the respondent or not?

18. Section 25-B of the Act postulates as under:—

"25B. Definition of continuous service- For the purposes of this Chapter,—

(*1*) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

(*a*) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(*i*) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(*ii*) *two hundred and forty days, in any other case;*

(*b*) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(*i*) *ninety-five days, in the case of a workman employed below ground in a mine; and*

(*ii*) *one hundred and twenty days, in any other case.*

Explanation.— For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(*i*) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*

(*ii*) *he has been on leave with full wages, earned in the previous years;*

(*iii*) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

(*iv*) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".*

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for atleast 240 days in a period of twelve calendar months to the workman for the purpose of continuous service. Meaning thereby that the employer can regulate the working of an employee as per his needs, but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner. In ***Digwadih Colliery v. Workmen, AIR 1966 SC 75,*** it has been held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Browsing of the mandays chart Ex.RW1/B reveals that from April, 2009 to May, 2012, the work for all the months was not made available to the petitioner by the respondent. Sometimes, he was provided the work for less than 15 days in a month by the respondent/ department. Be it recorded at the risk of repetition that the respondent has not placed on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had himself abandoned the work of his own free will and volition. If the petitioner used to remain absent from his duties then, why the respondent did not issue any show cause notice to him or initiate disciplinary proceedings against him? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per his sweet will and convenience is incorrect. Not providing the work for 240 days in a calendar year due to no fault of the workman is nothing but unfair labour practice. The mandays chart Ex.RW1/B makes it clear that the work for 240 days or more in a calendar year was not made available to the petitioner by the respondent. That being so, it can safely be held that artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act.

22. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

23. These issues are accordingly decided in favour of the petitioner and against the respondent.

Issue No.2 :

24. Not pressed.

Issue No.4 :

25. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. From the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5 :

26. The learned Deputy District Attorney for the respondent contended that the claim petition was in-fructuous as the petitioner had worked with the respondent/department after the month of June, 2012. As already mentioned in the aforesaid findings that the petitioner had worked with the respondent/department after June, 2012 and as such the claim of the petitioner has become partly in-fructuous qua his final termination. This issue is decided accordingly.

Relief :

27. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. Breaks in service given to the petitioner by the respondent from

the month of April, 2009 to May, 2012 are held to be wrong and illegal. The break period is ordered to be counted for the purpose of continuous service as well as seniority of the petitioner, except for back wages. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 179/2017

Date of Institution : 16.8.2017

Date of Decision :24.02.2020

Shri Joginder Singh s/o Shri Kharku Ram, r/o Village Sarli, P.O. Dohag, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

For the Respondent(s) : Smt. Navina Rahi, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether time to time termination of services of Shri Joginder Singh s/o Shri Kharku Ram, r/o Village Sarli, P.O. Dohag, Tehsil Joginder Nagar, District Mandi, H.P. during March, 1987 to November, 2013 by the Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent on 1.3.1987. He had been regularly working

and discharging his duties to the satisfaction of his superiors. A number of juniors were engaged by the department after his joining the service. Despite the availability of work, he was being given artificial breaks by the department. His juniors were retained and the names were mentioned in the seniority list. They were also regularized. The principle of 'last come first go' was also violated by the respondent. The name of the petitioner was not mentioned in the seniority list maintained by the department. The department had not adhered to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the works carried out by the forest department *i.e.* plantation work, fire protection work and soil moisture conservation work, are all seasonal and site specific. Depending upon the need, the department employs labour on the basis of seasonal requirement for its labour works. The demand of such labour is always fluctuating, depending upon the workload etc. It also depends upon the financial allocation to the works to be carried out in a year. For each and every work, norms are specified. The daily waged workers are not engaged against any regular vacancy and there is no post of casual labourer in the forest department. Since, the department is not a Work Charged Establishment and the daily wagers are not engaged against regular establishment, there is no regular budget provision for their wages in the annual budget of the department. The wages are paid out of the funds earmarked for the works, for which they are engaged. Since, much work is not available in the department, the labourers are engaged on daily or on monthly basis. The services of the petitioner were not engaged on 1.3.1987, but on 2.3.1987 as a casual labourer by the respondent. He had worked intermittently *w.e.f.* March, 1987 uptil October, 1990 on muster roll basis and thereafter had left the work of his own sweet will. He had worked on muster roll/bill basis *w.e.f.* November, 2006 uptil January, 2009. He had not completed 240 days in any calendar year so as to fulfill the conditions of Section 25-B of the Act. The respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Act. No artificial breaks were ever given to the petitioner. He is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 18.7.2018:

1. Whether time to time termination of the service of the petitioner by the respondent during March, 1987 to Nov., 2013 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the claim petition is bad on account of delay and latches as alleged? . . *OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Joginder Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed a document purportedly in support of his claim which is exhibited as Ex. PW1/B.

In the cross-examination, he denied that the works of plantation and soil conservation in forest department are seasonal and concerned to different places. He also denied that in the forest department the demand of labourer is as per the work load and site specific. He further denied that there are different norms for different works. He also denied that daily waged workers are not engaged against regular vacancy. Further, he denied that there is no post of casual labourer in the department. He also denied that the forest department is not a work charged establishmet, so there is no regular provision for annual budget. He further denied that wages for the particular work are given from the provided budget. He specifically denied that as no work is available throughout the year in the forest department, the labour is engaged on daily or monthly basis. He denied that he had not worked for 240 days in any calendar year. He also denied that no junior to him was either engaged or retained by the department. He clearly denied that that he had never been given artificial breaks. He owns land, which he cultivates. He denied that he is making a phoney statement.

11. Conversely, Shri Rakesh Katoch, Divisional Forest Officer, Joginder Forest Division, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Ex.PW1/B has been prepared by the department. Volunteered that, in this list only those persons have been shown who have completed 240 days in a calendar year. He denied that regular work is available in the department throughout the year. He further denied that the petitioner had been given artificial

breaks from time to time. He admitted that the persons shown at serial no.7 to 60 of the list were engaged from the years 1994 uptil the year 2005. Self stated that the petitioner had been reporting for duty as per his own convenience. He admitted that no notice to report for duty had been served upon the petitioner. He also admitted that the petitioner had worked uptil the year 2016. He clearly admitted that the person figuring in list Ex.RW1/C was engaged in the month of July, 1997.

12. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

13. Ex.RW1/C is the copy of Award dated 18.11.2013 passed in reference no.225/2012 by this Tribunal/Court.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of March, 1987 by the respondent. Placed on record by the petitioner is a copy of revised seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30.11.2016 as Ex. PW1/B. It reflects the name of the petitioner at serial no.1 and that his services were engaged as a daily wager on 2nd March, 1987. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. Moreover, the mandays chart Ex. RW1/B reveals that in some years, the petitioner had worked for more than 100 days with the respondent/department. In the year 1989, he served the respondent for 139 days. A person working for 139 days in a year cannot be termed as a seasonal worker. Even otherwise, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department had been declared as seasonal industry, as required under the law.

15. Now, I proceed to decide as to whether intentional breaks in service were provided to the petitioner by the respondent or nor?

16. Section 25-B of the Act postulates as under:—

"25B. Definition of continuous service- For the purposes of this Chapter,—

(1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

(3) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(*i*) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(*ii*) *two hundred and forty days, in any other case;*

(*b*) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(*i*) *ninety-five days, in the case of a workman employed below ground in a mine; and*

(*ii*) *one hundred and twenty days, in any other case.*

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(*v*) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*

(*vi*) *he has been on leave with full wages, earned in the previous years;*

(*vii*) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

(*viii*)*in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".*

17. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for atleast 240 days in a period of twelve calendar months to the workman for the purpose of continuous service. Meaning thereby that the employer can regulate the working of an employee as per his needs, but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner. In ***Digwadih Colliery v. Workmen, AIR 1966 SC 75,*** it has been held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

18. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

19. Browsing of the mandays chart Ex.RW1/B reveals that from March, 1987 to November, 2013, the work for all the months was not made available to the petitioner by the respondent. His presence has been marked at intervals during this period. Be it recorded at the risk of repetition that the respondent has not placed on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had himself abandoned the work of his own free will and volition. It cannot be believed that the petitioner would remain absent for months and years together and thereafter would be allowed to work again without issuance of any show cause notice in this regard to him. It was next contended that since April, 2009 the petitioner had been hiring the work from the respondent on bill basis. No doubt, as per the mandays Chart Ex.RW1/B since April, 1989 till February/March, 2016 the petitioner is shown to have done the work on bill basis and that from the year 1991 uptil the year 2005 he had not worked at all but, however, as per the mandays itself earlier the petitioner was

engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected have been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid argument raised for the respondent merits dismissal and is accordingly negated. Not providing the work for 240 days in a calendar year due to no fault of the workman is nothing but unfair labour practice. The mandays chart Ex.RW1/B makes it clear that the work for 240 days or more in a calendar year was not made available to the petitioner by the respondent. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act.

20. While testifying in the Court as PW1, the petitioner has given his age as 57 years. It is common knowledge that a man like the petitioner will not sit at home during the period he is/was out of service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

21. These issues are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

22. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. From the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

23. In ***Ajayab Singh*** *vs.* ***Sirhind Co-operative Marketing-****cum****-Processing Society Limited and Another, (1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

25. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from March, 1987 till November, 2013 wrongly and

illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, ***except back wages***. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 770/2016

Date of Institution : 19.11.2016

Date of Decision : 25.02.2020

Shri Kanshi Ram s/o Shri Chuhar Singh, r/o Village and P.O. Panjahra, Tehsil Nurpur, District Kangra, H.P. . .*Petitioner.*

Versus

1. The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P.

2. The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P.
. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.

For the Respondents : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the alleged termination of services of Shri Kanshi Ram s/o Shri Chuhar Singh, r/o Village and P.O. Panjahra, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nupur Division HPPWD Nurpur, District Kangra, H.P., (ii) The Executive Engineer, Jawali Division HPPWD Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the

office of Labour Officer Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1985 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such uptil the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 uptil the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11.9.2019:

1. Whether termination of the services of petitioner by the respondents during year 1990 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the claim petition is bad on account of delay and latches, as alleged?. . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner the learned Deputy District Attorney as per his statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in the year 1990 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1985 and had continuously worked as such uptil the year 1990. He had completed 240 days in twelve calendar months anterior to the date of his retrenchment and many juniors were retained. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the

petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondents that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty*** *vs.* ***Assistant Executive Engineer, (2006) 1 SCC 106,*** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1990. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Rai Singh and twenty three others who were junior to him, were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

18. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4 :

19. In ***Ajayab Singh*** *vs.* ***Sirhind Co-operative Marketing****-cum-****Processing Society Limited and Another, (1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra,* the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 240/2014

Date of Institution : 18.7.2014

Date of Decision : 27.02.2020

Shri Sunil Kumar s/o Shri Tulsi Ram, r/o VPO Beri Razadiyan, Tehsil Sadar, District Bilaspur, H.P . .*Petitioner.*

Versus

1. M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village Anji Barog Bye Pass, Solan-173211.

2. M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali-160071 (Area Office) . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent No. 1 : Sh. Rajat Sahotra, Adv.

For the Respondent No. 2 : Sh. Manish Katoch, Adv.

ॉ।त्क

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Sunil Kumar s/o Sh. Tulsi Ram, VPO Beri Razadiyan, Tehsil Sadar, Distt. Bilaspur, H.P. who was employed as Emergency Medical Technician during December, 2010 by the employer, (i) M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village Anji Barog Bye Pass, Solan-173211 (H.P.) employed through (ii) M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli-160071 (Area Office) *w.e.f.* 19.11.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation and from which date, the above workman is entitled to from the above Employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as an Emergency Medical Technician (EMT) by respondents no.1 and 2 on 21.12.2010 and that he had worked as such uptil 19.11.2012. On 19.11.2012, his services had orally been terminated without any reason and notice, which amounts to unfair labour practice. He issued demand notice. State Government after the receipt of the failure report from the Conciliation Officer, made the present reference to this Court. The petitioner had worked regularly with the respondents for more than 240 days in a calendar year. He was not given the salary and benefits as per the agreement entered into between the respondents and the State Government. After his retrenchment new workers have been engaged. He was not provided an opportunity of re-engagement by the respondents. No prior permission had been obtained from the appropriate Government by the respondents before retrenching him. The respondents had violated the

provisions of 25-F (a), 25-F (b), 25-A, 25-C, 25-E and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). They had not followed the principle of 'last come first go'. The petitioner is still unemployed. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondents appeared. Respondents no.1 and 2 filed separate replies.

4. The petition was contended by respondent No. 1, taking preliminary objections regarding lack of maintainability, locus standi, cause of action, suppression of material facts and that the petitioner has not come to the Court with clean hands and that the petition was bad for mis-joinder of party. The contents of the petition were denied on merits. It was asserted that if the petitioner was appointed, he was under the employment of respondent No. 2. Respondent No.1 was neither having any authority nor concern with the employment and termination of services of the petitioner. As per para 11 of the agreement entered into between respondents No.1 and 2, respondent No. 1 was not responsible either for the employment of the workers or for any claim, charges, demands made or raised by them during their employment. As per para No. 2 of the agreement, Adecco was to deploy and migrate the manpower resources for respondent No.1. Paras 4 and 5 of the agreement restricted the liability of respondent No. 1. The letter of appointment, transfer and termination, all have been issued by Adecco. Respondent No. 1 was not having the power to appoint or terminate the services of workers employed by respondent No. 2. It was having no control over the employment of the petitioner. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. Respondent No. 2 took preliminary objections regarding lack of maintainability, estoppel, locus standi, cause of action and that the petitioner had not come to the Court with clean hands and that respondent No. 2 was entitled to special cost under Section 35A of Code of Civil Procedure as the petition was frivolous and vexatious. The contents of the petition were denied on merits. However, it was admitted that the petitioner was employed as an Emergency Medical Technician (EMT) by respondent No. 2. It was asserted that he had been engaged for doing the work of respondent No. 1, which had signed a Memorandum of Understanding with the State of Himachal Pradesh. Now the agreement between respondents No. 1 & 2 stands terminated. It was specifically denied that the services of the petitioner had been terminated illegally. It has been claimed that he had been hired on fixed term contract basis as per the need base requirement. Respondent No. 2 had duly issued termination/work completion letter to the petitioner in tune of the terms and conditions of the fixed term appointment letter issued to him. Respondent No. 2 had already paid to him salary for the period for which he had rendered the services. As per practice, being medical emergency services the employee is to work in a general shift of 12 hours with a two hours recess. One day off is allowed to a worker, on his attending extra duty hours. The contract of respondents No. 1 & 2 stands terminated but, however, the former is still providing services in the State of Himachal Pradesh. Respondent No. 2 also prayed that petition be dismissed.

6. While filing the rejoinder the petitioner controverted the averments made in the replies and reiterated those in the statement of claim.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 06.4.2016:

1. Whether termination of services of the claimant/petitioner by the respondents *w.e.f.*19-11-2012 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR. 1&2*

4. Whether the petitioner has not approached the Court with clean hands as alleged? . .*OPR. 1&2*

5. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR. 1&2*

6. Whether claim petition is bad for mis-joinder of necessary party as alleged? . .*OPR 1 & 2*

7. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR 1&2.*

8. Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . .*OPR. 2*

Relief.

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

9. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondents heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly.
Issue No. 2	: Entitled to lump sum compensation of ₹50,000/- (Fifty thousand) only
Issue No. 3	: Not pressed
Issue No. 4	: Not pressed
Issue No. 5	: No
Issue No. 6	: Not pressed
Issue No. 7	: No
Issue No. 8	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

11. As per the petitioner, he had been engaged as an Emergency Medical Technician by the respondents and had worked continuously *w.e.f.* 21.12.2010 till 19.11.2012, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondents on the same post and with all service benefits including full back wages.

12. Per contra, respondent No. 1 contended that as the petitioner was not its employee, so there is no relationship of employee and employer between them. It was also claimed that the petitioner was an employee of respondent No. 2 and he had been deployed with respondent No. 1 under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent No.1, so it was not liable to reinstate the petitioner in service.

13. It was claimed by respondent No. 2 that it was engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an agreement in between respondent No. 1 and respondent No. 2 to provide workers, so the petitioner alongwith 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him.

14. In support of his case, Shri Sunil Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

15. In the cross-examination, he admitted that his interview was taken by respondent No. 2 and that the appointment letter had also been issued to him by the said respondent. He was also categorical that his appointment was on contractual basis with respondent No. 2. Further, he admitted that his termination letter had been issued by Adecco Company. It was also clearly admitted by him that now the contract between respondent no.1 and respondent No. 2 has come to an end.

16. Mark-A is the copy of order dated 09.4.2015 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1583 of 2014 along-with CWP No. 6406/2014.

17. Conversely, respondent no.1 examined Shri Daya Ram, HR (authorized person) GVK, EMRI, Dharampur, as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No.1.

18. In the cross-examination, he admitted that agreement dated 10.8.2010 had been entered into between them and respondent No. 2. He was also categorical that the manpower was to be supplied by the latter to the former.

19. Ex. RW1/B is the copy of authority letter dated 06.7.2017.

20. Ex.RW1/C is the copy of Agreement dated 10.8.2010 executed in between GVK Emergency Management And Research Institute and M/s. Adecco Flexione Workforce Solutions Private Limited.

21. Shri Harpreet Singh, Branch Manager, M/s Adecco India Private Ltd. SCO No.21-22, Sector 19-C, Chandigarh appeared as RW2 for respondent No. 2. In his affidavit Ex. RW1/A

preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No.2.

22. In the cross-examination, he admitted that as per the agreement the petitioner had been engaged by respondent No. 2 and who had been sent for work to respondent No. 1. He further admitted that an appointment letter had been issued by them to the petitioner wherein it is mentioned that the petitioner will work for GVK. Volunteered that, it was issued as per the requirement of GVK. It was also clearly admitted by him that termination letter dated 20.10.2012 had been issued by them. He categorically admitted that after full and final settlement, the petitioner had been removed by them. He denied that there was no role of respondent No.1 to terminate the petitioner. He further denied that the petitioner had been removed by respondent No.2.

23. Ex. RW2/B is the copy of appointment letter dated 10.2.2011 of the petitioner.

24. Ex.RW2/C is the copy of letter dated 18.10.2012 regarding termination of contract of employment relating to the petitioner.

25. Ex.RW1/D is the copy of license dated 24.7.2012 pertaining to M/s Adecco India Pvt. Ltd.

26. Ex.RW2/E is the copy of the e-mail dated 14th August, 2013.

27. It is not disputed that respondent no.1 had signed a memorandum of understanding with the Government of Himachal Pradesh, as per which respondent No.1 had been permitted to take skilled manpower from a third agency. From the ocular and documentary evidence, as discussed above, it is apparent that pursuant to the said memorandum of understanding, respondent No. 1 had entered into an agreement dated 10.8.2010 (Ex.RW1/C) with respondent No. 2, whereby the manpower had been supplied to respondent No. 1 by respondent No. 2. Be it recorded here that respondent No. 2 is the area office.

28. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent No. 1 or that of respondent No. 2. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd.*** *vs.* ***State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

29. In the case on hand, it was asserted by the petitioner that he was an employee of the respondents. Respondent No. 1 denied this fact and claimed that he was an employee of respondent No. 2. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between him and respondent No. 1. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent No. 1. Rather, respondent No. 2 tendered in evidence a copy of appointment letter of the petitioner as Ex. RW2/B. As per this document the petitioner had initially been appointed by respondent No. 2 as a Medical Emergency Technician on 22.12.2010. Then, as per the own pleaded case of respondent No. 2, the petitioner had been employed by it for doing the work for respondent No. 1. It was also its case that termination/work completion letter

had also been issued by it to the petitioner. In his substantive evidence, the petitioner clearly admitted that he had been issued the appointment letter by respondent No. 2. Shri Harpreet Singh (RW2) was categorical that the salary was being paid by them to the petitioner. From these admissions made by the petitioner and respondent No. 2, it is evident that he was appointed by respondent No. 2 and that he was being paid the salary by the said respondent only. Shri Daya Ram (RW1) was specific in his evidence that respondent No.1 was neither having any authority nor concern with the employment and termination of the services of the petitioner. According to him, as per the agreement entered into between respondent No. 1 and respondent No.2, it was only respondent No.2 who was to deploy and migrate the manpower for respondent No.1. A close scrutiny of the copy of agreement (Ex.RW1/C), which is an admitted document on the part of the respondents, would reveal that the manpower was to be deployed by respondent No.2 for respondent No.1, for providing emergency services. Shri Harpreet Singh (RW2) was specific in his evidence that the services of casual/temporary employees was being taken for a fixed period of employment and that the same continued and ended with the project/work, for which they were employed. The petitioner had also been selected on the said basis for the post of Emergency Medical Technician and had been deputed with respondent No.1. He was issued an appointment letter. While under cross-examination, he was categorical that the salary was being paid by them to the petitioner.

30. Then, as per the copy of letter of employment Ex.RW2/B dated 22.12.2010, it had been issued by respondent No. 2 in favour of the petitioner and that the same was accepted by the latter by appending his signature on it. This documentary evidence, coupled with the oral evidence, as discussed above, leaves no doubt in mind that the petitioner stood appointed and terminated by respondent No. 2 only.

31. Faced with the situation, it was then contended that as the petitioner was under the direct control and supervision of respondent No.1, he ought to be deemed to be a direct employee of respondent No. 1. This cannot be accepted. It has been laid down by the Hon'ble Supreme Court in case titled as ***International Airport Authority of India vs. International Air Cargo Workers Union and Anr., (2009) 13 SCC 374*** that if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but that would not make the worker a direct employee of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor. In the present case, as discussed above, the petitioner who was appointed as an Emergency Medical Technician by respondent No. 2, was to work under the directions, supervision and control of respondent No. 1, but his salary, as per the admission made by Shri Harpreet Singh (RW2) was being paid by respondent no.2. His services stood terminated by respondent No. 2 only, by issuance of letter dated 19.11.2012, copy of which is placed on record as Ex.RW2/C. Therefore, the petitioner being an employee of respondent No. 2, the ultimate supervision and control lay with it, as it had decided where he was to work and how long he would work and subject to what conditions. He being sent to work under respondent no.1 by respondent No. 2, would only constitute secondary control by respondent no.1 and the primary control remained with respondent No.2.

32. Our own Hon'ble High Court in case titled as ***Agya Ram vs. State of H.P., 2016 (sup.)Him.L.R. 2821*** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent No.1. No appointment letter issued by respondent No. 1 in his favour has been placed on record by the petitioner. Rather, as discussed above, he stood appointed vide an appointment

letter issued by respondent No. 2 and that the salary was being paid to him by respondent No. 2 only. Then, no grain of evidence has been led on record by the petitioner to demonstrate that the primary control and supervision over him lay with respondent No. 1 while discharging the official duties. In ***Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186***, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by respondent no.1 only and that he was working directly under its control and supervision, so he cannot be said to be an employee of respondent No.1. Rather, it is apparent that he was an employee of respondent no.2, being his contractor and who was having the primary control and supervision over him.

33. It was next contended for the petitioner that his services stood terminated illegally without serving him any notice as required under Section 25-F of the Act, particularly when he was having continuous service of one year anterior to the date of his termination. It was also claimed that persons junior to him were retained and fresh workers had been engaged by the respondents, which was violative of the provisions of Section 25-G and 25-H of the Act. Conversely, it was claimed for respondent No. 2 that the services of the petitioner had been engaged for a fixed period of employment *vide* letter of employment (Ex.RW2/B), therefore, the termination of his services does not fall within the ambit of term 'retrenchment', as defined in Section 2 (oo) of the Act. No doubt, as per the letter of employment, copy of which is placed on record as Ex. RW2/B, the term of appointment of the petitioner was valid for a period of one year from 22.12.2010 to 21.12.2011, but the fact remains that his services stood terminated by respondent No. 2 only on 19.11.2012. Although, it was claimed by respondent No. 2 that after 21.12.2011, the services of the petitioner had been extended by it from time to time under the scheme, but no such scheme or order extending the term of appointment of the petitioner has seen the light of the day. The onus lay on respondent No. 2 to establish on record that after 21.12.2011, time to time terms of appointment of the petitioner had been extended by way of contract(s). Strangely enough, no such order or contract has been placed and proved on record by respondent No. 2. True it is that initially the petitioner had been appointed as an Emergency Medical Technician for a fixed term of one year but, however, after the expiry of the said term of one year, he still continued in service. His services were not discontinued on 21.12.2011. Be it recorded at the risk of repetition, no order extending the term of appointment of the petitioner has been placed on record by respondent No. 2. Therefore, it is my humble opinion that no limitation was fixed regarding the period of employment of the petitioner after 21.12.2011. That being the position, it cannot be said that the termination of services of the petitioner did not fall within the scope of 'retrenchment' as envisaged under Section 2 (oo) of the Act.

34. There is no denial of the fact that vide agreement dated 10.8.2010 (Ex.RW1/C), respondent No. 2 had provided its services to engage the petitioner alongwith many other workers to respondent No. 1. Shri Harpreet Singh (RW2) clearly admitted that an agreement (Ex.RW1/C) had been entered into in between respondent No. 1 and respondent No. 2. He was also categorical that as per this agreement the petitioner had been engaged by them. It is specifically stated by the petitioner that he had worked continuously *w.e.f.* 21.12.2010 till 19.11.2012 and that he had completed more than 240 days in each calendar year. His such testimony has remained unchallenged in the cross-examination. No iota of evidence has been led on record by the respondents to show that the petitioner had not completed more than 240 days in each calendar year. Shri Harpreet Singh (RW2) was categorical in his cross-examination that termination letter dated 19.11.2012 had been issued by them. Be it stated here that as per this

letter (Ex.RW2/C) the services of the petitioner stood terminated by respondent No. 2. It is nowhere the case of respondent No. 2 that it had not engaged more than 100 workers for rendering services to respondent No. 1. Therefore, the provisions of Chapter VB of the Act are applicable to the present case. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

> "25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—
>
> (*a*) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
>
> (*b*) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

35. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

36. Hence, this issue is decided accordingly.

Issue No. 2 :

37. Since, the termination of the services of the petitioner by respondent No. 2 has been held to be illegal and unjustified, as the provisions of Section 25-N of the Act had not been complied with, the question which now arises before this Court is as to what service benefits the petitioner is entitled to. From the ocular evidence led on record by the parties, it is clear that the contract in between respondent No. 1 and respondent No. 2 stands expired. Shri Sunil Kumar (PW1) categorically admitted while under cross-examination that now the contract in between respondent No. 1 and respondent No. 2 has come to an end. So has also been admitted by Shri Daya Ram (RW1). Shri Harpreet Singh (RW2) was also specific in his chief-examination that now the agreement in between respondent No. 1 and respondent No. 2 stands terminated. That being the position, it would not be appropriate for this Court to pass an order for reinstatement of the petitioner in the present case, even though his termination has been proved to be illegal and unjustified, as respondent No. 2 is no more providing any manpower and the services in the project, where the petitioner had earlier been engaged. It has been laid down by the Hon'ble Supreme Court in ***Jagbir Singh vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327*** that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. It was also observed that compensation instead of reinstatement would meet the ends of justice. Similar is the view taken by the Hon'ble Supreme Court in case titled ***Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal and others vs. 2010 LLR 677.*** Taking into account the facts and circumstances of this case and in view of the aforesaid binding precedents of the Hon'ble

Supreme Court, the ends of justice would be met, if a lump sum compensation is awarded to the petitioner. Consequently, the petitioner is entitled to receive appropriate compensation from respondent No. 2. Since the services of the petitioner had been terminated in contravention of the prescribed procedure of the Act, therefore, he is entitled to a lump sum compensation quantified at ₹50,000/-. This issue is decided accordingly.

Issues No.3, 4 and 6 :

38. Not pressed.

Issues No. 5 and 7 :

39. In view of my findings on issues No. 1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as the cause of action to file and maintain the present petition. Hence, both these issues are answered in the negative and are decided against the respondents.

Issue No. 8 :

40. No evidence of estoppel has been led by the respondents. Hence, this issue is answered in the negative and is decided against the respondents

Relief :

41. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* respondent No. 2 is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent 2 to the petitioner within four months from the date of receipt of Award failing which it shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 248/2014

Date of Institution : 22.7.2014

Date of Decision : 28.02.2020

Shri Rajesh Kumar s/o Shri Jagat Ram, r/o Village Rechhera, P.O. Loharwin, Tehsil Ghumarwin, District Bilaspur, H.P. . .*Petitioner.*

Versus

1. M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village Anji Barog Bye Pass, Solan-173211

2. M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali-160071 (Area Office) . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent No. 1 : Sh. Rajat Sahotra, Adv.

For the Respondent No. 2 : Sh. Manish Katoch, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Rajesh Kumar s/o Sh. Jagat Ram, Village Rachhera, P.O. Loharwin, Tehsil Ghumarwin, Distt. Bilaspur, H.P. who was employed as Driver during December, 2010 by the employer, (i) M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.) employed through (ii) M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohali-160071 (Area Office) *w.e.f.* 18.12.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation and from which date, the above workman is entitled to from the above Employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a Driver/Pilot by respondents No. 1 and 2 on 18.12.2010 and that he had worked as such uptil 18.12.2012. On 18.12.2012, his services had orally been terminated without any reason and notice, which amounts to unfair labour practice. He issued demand notice. State Government after the receipt of the failure report from the Conciliation Officer, made the present reference to this Court. The petitioner had worked regularly with the respondents for more than 240 days in a calendar year. He was not given the salary and benefits as per the agreement entered into between the respondents and the State Government. After his retrenchment new workers have been engaged. He was not provided an opportunity of re-engagement by the respondents. No prior permission had been obtained from the appropriate Government by the respondents before retrenching him. The respondents had violated the provisions of 25-F (a), 25-F (b), 25-A, 25-C, 25-E and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). They had not followed the principle of 'last come first go'. The petitioner is still unemployed. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondents appeared. Respondents no.1 and 2 filed separate replies.

4. The petition was contended by respondent No. 1, taking preliminary objections regarding lack of maintainability, locus standi, cause of action, suppression of material facts and that the petitioner has not come to the Court with clean hands and that the petition was bad for mis-joinder of party. The contents of the petition were denied on merits. It was asserted that if the petitioner was appointed, he was under the employment of respondent No. 2. Respondent No. 1 was neither having any authority nor concern with the employment and termination of services of the petitioner. As per para 11 of the agreement entered into between respondents No.1 and 2, respondent No.1 was not responsible either for the employment of the workers or for any claim, charges, demands made or raised by them during their employment. As per para No. 2 of the agreement, Adecco was to deploy and migrate the manpower resources for respondent No. 1. Paras 4 and 5 of the agreement restricted the liability of respondent No. 1. The letter of appointment, transfer and termination, all have been issued by Adecco. Respondent No. 1 was not having the power to appoint or terminate the services of workers employed by respondent No. 2. It was having no control over the employment of the petitioner. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. Respondent No. 2 took preliminary objections regarding lack of maintainability, estoppel, locus standi, cause of action and that the petitioner had not come to the Court with clean hands and that respondent No. 2 was entitled to special cost under Section 35A of Code of Civil Procedure as the petition was frivolous and vexatious. The contents of the petition were denied on merits. However, it was admitted that the petitioner was employed as a Driver/Pilot by respondent No.2. It was asserted that he had been engaged for doing the work of respondent No.1, which had signed a Memorandum of Understanding with the State of Himachal Pradesh. Now the agreement between respondents No. 1 & 2 stands terminated. It was specifically denied that the services of the petitioner had been terminated illegally. It has been claimed that he had been hired on fixed term contract basis as per the need base requirement. Respondent No. 2 had duly issued termination/work completion letter to the petitioner in tune of the terms and conditions of the fixed term appointment letter issued to him. Respondent No. 2 had already paid to him salary for the period for which he had rendered the services. As per practice, being medical emergency services the employee is to work in a general shift of 12 hours with a two hours recess. One day off is allowed to a worker, on his attending extra duty hours. The contract of respondents No. 1 & 2 stands terminated but, however, the former is still providing services in the State of Himachal Pradesh. Respondent No. 2 also prayed that petition be dismissed.

6. While filing the rejoinder the petitioner controverted the averments made in the replies and reiterated those in the statement of claim.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 06.4.2016:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 18-12-2012 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.* 1

4. Whether the petitioner has not approached the Court with clean hands as alleged? . .*OPR.* 1&2

5. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR.* 1&2

6. Whether claim petition is bad for mis-joinder of necessary party as alleged? . .*OPR.* 1

7. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR.* 1&2

8. Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . .*OPR.* 2

Relief.

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

9. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondents heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly.
Issue No. 2	: Entitled to lump sum compensation of ₹50,000/-(Fifty thousand) only.
Issue No. 3	: Not pressed
Issue No. 4	: Not pressed
Issue No. 5	: No
Issue No. 6	: Not pressed
Issue No. 7	: No
Issue No. 8	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

11. As per the petitioner, he had been engaged as a Driver/Pilot by the respondents and had worked continuously *w.e.f.* 18.12.2010 till 18.12.2012, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondents on the same post and with all service benefits including full back wages.

12. Per contra, respondent No.1 contended that as the petitioner was not its employee, so there is no relationship of employee and employer between them. It was also claimed that the

petitioner was an employee of respondent No. 2 and he had been deployed with respondent No. 1 under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent No. 1, so it was not liable to reinstate the petitioner in service.

13. It was claimed by respondent No. 2 that it was engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an agreement in between respondent No. 1 and respondent No. 2 to provide workers, so the petitioner along-with 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him.

14. In support of his case, Shri Rajesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

15. In the cross-examination, he admitted that his interview was taken by respondent No. 2 and that the appointment letter had also been issued to him by the said respondent. He was also categorical that his appointment was on contractual basis with respondent No. 2. Further, he admitted that his termination letter had been issued by Adecco Company. It was also clearly admitted by him that now the contract between respondent No. 1 and respondent No. 2 has come to an end.

16. Mark-A is the copy of order dated 09.4.2015 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1583 of 2014 along-with CWP No.6406/2014.

17. Conversely, respondent No. 1 examined Shri Daya Ram, HR (authorized person) GVK, EMRI, Dharampur, as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No. 1.

18. In the cross-examination, he admitted that agreement dated 10.8.2010 had been entered into between them and respondent No. 2. He was also categorical that the manpower was to be supplied by the latter to the former.

19. Ex. RW1/B is the copy of authority letter dated 06.7.2017.

20. Ex.RW1/C is the copy of Agreement dated 10.8.2010 executed in between GVK Emergency Management And Research Institute and M/s. Adecco Flexione Workforce Solutions Private Limited.

21. Shri Harpreet Singh, Branch Manager, M/s Adecco India Private Ltd. SCO No.21-22, Sector 19-C, Chandigarh appeared as RW2 for respondent No. 2. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No. 2.

22. In the cross-examination, he admitted that as per the agreement the petitioner had been engaged by respondent No. 2 and who had been sent for work to respondent No. 1. He further admitted that an appointment letter had been issued by them to the petitioner wherein it is mentioned that the petitioner will work for GVK. Volunteered that, it was issued as per the requirement of GVK. It was also clearly admitted by him that termination letter dated 20.10.2012 had been issued by them. He categorically admitted that after full and final settlement, the

petitioner had been removed by them. He denied that there was no role of respondent No. 1 to terminate the petitioner. He further denied that the petitioner had been removed by respondent No.2.

23. Ex. RW2/B is the copy of appointment letter dated 10.2.2011 of the petitioner.

24. Ex.RW2/C is the copy of letter dated 18.10.2012 regarding termination of contract of employment relating to the petitioner.

25. Ex.RW1/D is the copy of license dated 24.7.2012 pertaining to M/s Adecco India Pvt. Ltd.

26. Ex.RW2/E is the copy of the e-mail dated 14th August, 2013.

27. It is not disputed that respondent No. 1 had signed a memorandum of understanding with the Government of Himachal Pradesh, as per which respondent no.1 had been permitted to take skilled manpower from a third agency. From the ocular and documentary evidence, as discussed above, it is apparent that pursuant to the said memorandum of understanding, respondent No. 1 had entered into an agreement dated 10.8.2010 (Ex.RW1/C) with respondent No. 2, whereby the manpower had been supplied to respondent No. 1 by respondent No. 2. Be it recorded here that respondent no.2 is the area office.

28. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent No. 1 or that of respondent No. 2. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd.*** *vs.* ***State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

29. In the case on hand, it was asserted by the petitioner that he was an employee of the respondents. Respondent No. 1 denied this fact and claimed that he was an employee of respondent No. 2. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between him and respondent No. 1. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent No.1. Rather, respondent No.2 tendered in evidence a copy of appointment letter of the petitioner as Ex. RW2/B. As per this document the petitioner had initially been appointed by respondent No. 2 as a Driver/Pilot on 22.12.2010. Then, as per the own pleaded case of respondent No. 2, the petitioner had been employed by it for doing the work for respondent No. 1. It was also its case that termination/work completion letter had also been issued by it to the petitioner. In his substantive evidence, the petitioner clearly admitted that he had been issued the appointment letter by respondent No. 2. Shri Harpreet Singh (RW2) was categorical that the salary was being paid by them to the petitioner. From these admissions made by the petitioner and respondent No. 2, it is evident that he was appointed by respondent No. 2 and that he was being paid the salary by the said respondent only. Shri Daya Ram (RW1) was specific in his evidence that respondent No. 1 was neither having any authority nor concern with the employment and termination of the services of the petitioner. According to him, as per the agreement entered into between respondent No. 1 and respondent No. 2, it was only respondent No. 2 who was to deploy and migrate the manpower for respondent No. 1. A close scrutiny of the

copy of agreement (Ex.RW1/C), which is an admitted document on the part of the respondents, would reveal that the manpower was to be deployed by respondent No. 2 for respondent No. 1, for providing emergency services. Shri Harpreet Singh (RW2) was specific in his evidence that the services of casual/temporary employees was being taken for a fixed period of employment and that the same continued and ended with the project/work, for which they were employed. The petitioner had also been selected on the said basis for the post of Driver/Pilot and had been deputed with respondent No. 1. He was issued an appointment letter. While under cross-examination, he was categorical that the salary was being paid by them to the petitioner.

30. Then, as per the copy of letter of employment Ex.RW2/B dated 22.12.2010, it had been issued by respondent No. 2 in favour of the petitioner and that the same was accepted by the latter by appending his signature on it. This documentary evidence, coupled with the oral evidence, as discussed above, leaves no doubt in mind that the petitioner stood appointed and terminated by respondent No. 2 only.

31. Faced with the situation, it was then contended that as the petitioner was under the direct control and supervision of respondent No. 1, he ought to be deemed to be a direct employee of respondent No. 1. This cannot be accepted. It has been laid down by the Hon'ble Supreme Court in case titled as ***International Airport Authority of India vs. International Air Cargo Workers Union and Anr., (2009) 13 SCC 374*** that if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but that would not make the worker a direct employee of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor. In the present case, as discussed above, the petitioner who was appointed as a Driver/Pilot by respondent No. 2, was to work under the directions, supervision and control of respondent No. 1, but his salary, as per the admission made by Shri Harpreet Singh (RW2) was being paid by respondent No. 2. His services stood terminated by respondent No. 2 only, by issuance of letter dated 18.12.2012, copy of which is placed on record as Ex.RW2/C. Therefore, the petitioner being an employee of respondent No. 2, the ultimate supervision and control lay with it, as it had decided where he was to work and how long he would work and subject to what conditions. He being sent to work under respondent no.1 by respondent No. 2, would only constitute secondary control by respondent No.1 and the primary control remained with respondent No. 2.

32. Our own Hon'ble High Court in case titled as ***Agya Ram vs. State of H.P., 2016 (sup.)Him.L.R. 2821*** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent No.1. No appointment letter issued by respondent No.1 in his favour has been placed on record by the petitioner. Rather, as discussed above, he stood appointed vide an appointment letter issued by respondent No. 2 and that the salary was being paid to him by respondent No.2 only. Then, no grain of evidence has been led on record by the petitioner to demonstrate that the primary control and supervision over him lay with respondent No.1 while discharging the official duties. In ***Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186***, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by respondent No.1

only and that he was working directly under its control and supervision, so he cannot be said to be an employee of respondent No.1. Rather, it is apparent that he was an employee of respondent No.2, being his contractor and who was having the primary control and supervision over him.

33. It was next contended for the petitioner that his services stood terminated illegally without serving him any notice as required under Section 25-F of the Act, particularly when he was having continuous service of one year anterior to the date of his termination. It was also claimed that persons junior to him were retained and fresh workers had been engaged by the respondents, which was violative of the provisions of Section 25-G and 25-H of the Act. Conversely, it was claimed for respondent No. 2 that the services of the petitioner had been engaged for a fixed period of employment vide letter of employment (Ex.RW2/B), therefore, the termination of his services does not fall within the ambit of term 'retrenchment', as defined in Section 2 (oo) of the Act. No doubt, as per the letter of employment, copy of which is placed on record as Ex. RW2/B, the term of appointment of the petitioner was valid for a period of one year from 22.12.2010 to 21.12.2011, but the fact remains that his services stood terminated by respondent No.2 only on 18.12.2012. Although, it was claimed by respondent No.2 that after 21.12.2011, the services of the petitioner had been extended by it from time to time under the scheme, but no such scheme or order extending the term of appointment of the petitioner has seen the light of the day. The onus lay on respondent No. 2 to establish on record that after 21.12.2011, time to time terms of appointment of the petitioner had been extended by way of contract(s). Strangely enough, no such order or contract has been placed and proved on record by respondent No. 2. True it is that initially the petitioner had been appointed as a Driver/Pilot for a fixed term of one year but, however, after the expiry of the said term of one year, he still continued in service. His services were not discontinued on 21.12.2011. Be it recorded at the risk of repetition, no order extending the term of appointment of the petitioner has been placed on record by respondent No. 2. Therefore, it is my humble opinion that no limitation was fixed regarding the period of employment of the petitioner after 21.12.2011. That being the position, it cannot be said that the termination of services of the petitioner did not fall within the scope of 'retrenchment' as envisaged under Section 2 (oo) of the Act.

34. There is no denial of the fact that vide agreement dated 10.8.2010 (Ex.RW1/C), respondent No. 2 had provided its services to engage the petitioner alongwith many other workers to respondent No.1. Shri Harpreet Singh (RW2) clearly admitted that an agreement (Ex.RW1/C) had been entered into in between respondent No. 1 and respondent No. 2. He was also categorical that as per this agreement the petitioner had been engaged by them. It is specifically stated by the petitioner that he had worked continuously *w.e.f.* 21.12.2010 till 18.12.2012 and that he had completed more than 240 days in each calendar year. His such testimony has remained unchallenged in the cross-examination. No iota of evidence has been led on record by the respondents to show that the petitioner had not completed more than 240 days in each calendar year. Shri Harpreet Singh (RW2) was categorical in his cross-examination that termination letter dated 18.12.2012 had been issued by them. Be it stated here that as per this letter (Ex.RW2/C) the services of the petitioner stood terminated by respondent No. 2. It is nowhere the case of respondent No. 2 that it had not engaged more than 100 workers for rendering services to respondent No.1. Therefore, the provisions of Chapter VB of the Act are applicable to the present case. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

> "25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(*a*) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(*b*) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

35. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

36. Hence, this issue is decided accordingly.

Issue No. 2 :

37. Since, the termination of the services of the petitioner by respondent No. 2 has been held to be illegal and unjustified, as the provisions of Section 25-N of the Act had not been complied with, the question which now arises before this Court is as to what service benefits the petitioner is entitled to. From the ocular evidence led on record by the parties, it is clear that the contract in between respondent No.1 and respondent No. 2 stands expired. Shri Rajesh Kumar (PW1) categorically admitted while under cross-examination that now the contract in between respondent No. 1 and respondent No. 2 has come to an end. So has also been admitted by Shri Daya Ram (RW1). Shri Harpreet Singh (RW2) was also specific in his chief-examination that now the agreement in between respondent No.1 and respondent No. 2 stands terminated. That being the position, it would not be appropriate for this Court to pass an order for reinstatement of the petitioner in the present case, even though his termination has been proved to be illegal and unjustified, as respondent No. 2 is no more providing any manpower and the services in the project, where the petitioner had earlier been engaged. It has been laid down by the Hon'ble Supreme Court in *Jagbir Singh vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327* that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. It was also observed that compensation instead of reinstatement would meet the ends of justice. Similar is the view taken by the Hon'ble Supreme Court in case titled *Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal and others vs. 2010 LLR 677.* Taking into account the facts and circumstances of this case and in view of the aforesaid binding precedents of the Hon'ble Supreme Court, the ends of justice would be met, if a lump sum compensation is awarded to the petitioner. Consequently, the petitioner is entitled to receive appropriate compensation from respondent No. 2. Since the services of the petitioner had been terminated in contravention of the prescribed procedure of the Act, therefore, he is entitled to a lump sum compensation quantified at ₹50,000/-. This issue is decided accordingly.

Issues No.3, 4 and 6 :

38. Not pressed.

Issues No. 5 and 7 :

39. In view of my findings on issues No. 1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as the cause of action to file and maintain the present petition. Hence, both these issues are answered in the negative and are decided against the respondents.

Issue No.8 :

40. No evidence of estoppel has been led by the respondents. Hence, this issue is answered in the negative and is decided against the respondents.

Relief :

41. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* respondent No. 2 is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent 2 to the petitioner within four months from the date of receipt of Award failing which it shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 247/2014

Date of Institution : 22.7.2014

Date of Decision : 28.02.2020

Shri Rajneesh Kumar s/o Shri Baljeet Singh, r/o Village Kachhwin, P.O. Sohari, Tehsil Barsar, District Hamirpur, H.P. . .*Petitioner.*

Versus

1. M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211

2. M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali-160071 (Area Office) . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent No.1 : Sh. Rajat Sahotra, Adv.

For the Respondent No. 2 : Sh. Manish Katoch, Adv.

ॉ।त्क

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Rajneesh Kumar s/o Sh. Baljeet Singh, Village–Kachhwin, P.O. Sohari, Tehsil Barsar, Distt. Hamirpur, (H.P.) who was employed as Emergency Medical Technician during April, 2011 by the employer, (i) M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.) employed through (ii) M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli-160071 (Area Office) w.e.f. 18.10.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation and from which date, the above workman is entitled to from the above Employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as an Emergency Medical Technician (EMT) by respondents No.1 and 2 on 4.4.2011 and that he had worked as such uptil 18.10.2012. On 18.10.2012, his services had orally been terminated without any reason and notice, which amounts to unfair labour practice. He issued demand notice. State Government after the receipt of the failure report from the Conciliation Officer, made the present reference to this Court. The petitioner had worked regularly with the respondents for more than 240 days in a calendar year. He was not given the salary and benefits as per the agreement entered into between the respondents and the State Government. After his retrenchment new workers have been engaged. He was not provided an opportunity of re-engagement by the respondents. No prior permission had been obtained from the appropriate Government by the respondents before retrenching him. The respondents had violated the provisions of 25-F (a), 25-F (b), 25-A, 25-C, 25-E and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). They had not followed the principle of 'last come first go'. The petitioner is still unemployed. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondents appeared. Respondents No. 1 and 2 filed separate replies.

4. The petition was contended by respondent No. 1, taking preliminary objections regarding lack of maintainability, locus standi, cause of action, suppression of material facts and that the petitioner has not come to the Court with clean hands and that the petition was bad for mis-joinder of party. The contents of the petition were denied on merits. It was asserted that if the petitioner was appointed, he was under the employment of respondent No. 2. Respondent No.1

was neither having any authority nor concern with the employment and termination of services of the petitioner. As per para 11 of the agreement entered into between respondents No. 1 and 2, respondent No. 1 was not responsible either for the employment of the workers or for any claim, charges, demands made or raised by them during their employment. As per para No. 2 of the agreement, Adecco was to deploy and migrate the manpower resources for respondent No. 1. Paras 4 and 5 of the agreement restricted the liability of respondent No.1. The letter of appointment, transfer and termination, all have been issued by Adecco. Respondent No. 1 was not having the power to appoint or terminate the services of workers employed by respondent No. 2. It was having no control over the employment of the petitioner. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. Respondent No. 2 took preliminary objections regarding lack of maintainability, estoppel, locus standi, cause of action and that the petitioner had not come to the Court with clean hands and that respondent No. 2 was entitled to special cost under Section 35A of Code of Civil Procedure as the petition was frivolous and vexatious. The contents of the petition were denied on merits. However, it was admitted that the petitioner was employed as an Emergency Medical Technician (EMT) by respondent No. 2. It was asserted that he had been engaged for doing the work of respondent No. 1, which had signed a Memorandum of Understanding with the State of Himachal Pradesh. Now the agreement between respondents No. 1 & 2 stands terminated. It was specifically denied that the services of the petitioner had been terminated illegally. It has been claimed that he had been hired on fixed term contract basis as per the need base requirement. Respondent No. 2 had duly issued termination/work completion letter to the petitioner in tune of the terms and conditions of the fixed term appointment letter issued to him. Respondent No. 2 had already paid to him salary for the period for which he had rendered the services. As per practice, being medical emergency services the employee is to work in a general shift of 12 hours with a two hours recess. One day off is allowed to a worker, on his attending extra duty hours. The contract of respondents No. 1 & 2 stands terminated but, however, the former is still providing services in the State of Himachal Pradesh. Respondent No.2 also prayed that petition be dismissed.

6. While filing the rejoinder the petitioner controverted the averments made in the replies and reiterated those in the statement of claim.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 06.4.2016:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 18-10-2012 is/was illegal and unjustified as alleged? . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . .*OPR.* 1&2
4. Whether the petitioner has not approached the Court with clean hands as alleged? . .*OPR.* 1&2
5. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR.* 1&2
6. Whether claim petition is bad for mis-joinder of necessary party as alleged? . . *OPR.* 1
7. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR.* 1&2

8. Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . .*OPR.* 2

Relief.

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

9. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondents heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly.
Issue No. 2	: Entitled to lump sum compensation of ₹50,000/- (Fifty thousand) only
Issue No. 3	: Not pressed
Issue No. 4	: Not pressed
Issue No. 5	: No
Issue No. 6	: Not pressed
Issue No. 7	: No
Issue No. 8	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

11. As per the petitioner, he had been engaged as an Emergency Medical Technician by the respondents and had worked continuously *w.e.f.* 4.4.2011 till 18.10.2012, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondents on the same post and with all service benefits including full back wages.

12. Per contra, respondent No. 1 contended that as the petitioner was not its employee, so there is no relationship of employee and employer between them. It was also claimed that the petitioner was an employee of respondent No. 2 and he had been deployed with respondent No. 1 under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent No.1, so it was not liable to reinstate the petitioner in service.

13. It was claimed by respondent No. 2 that it was engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an agreement in between respondent No.1 and respondent No.2 to provide workers, so the petitioner along-with 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him.

14. In support of his case, Shri Rajneesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

15. In the cross-examination, he admitted that his interview was taken by respondent No.2 and that the appointment letter had also been issued to him by the said respondent. He was also categorical that his appointment was on contractual basis with respondent No. 2. Further, he admitted that his termination letter had been issued by Adecco Company. It was also clearly admitted by him that now the contract between respondent No. 1 and respondent No. 2 has come to an end.

16. Mark-A is the copy of order dated 09.4.2015 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1583 of 2014 along-with CWP No.6406/2014.

17. Conversely, respondent No. 1 examined Shri Daya Ram, HR (authorized person) GVK, EMRI, Dharampur, as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No.1.

18. In the cross-examination, he admitted that agreement dated 10.8.2010 had been entered into between them and respondent No. 2. He was also categorical that the manpower was to be supplied by the latter to the former.

19. Ex. RW1/B is the copy of authority letter dated 06.7.2017.

20. Ex.RW1/C is the copy of Agreement dated 10.8.2010 executed in between GVK Emergency Management And Research Institute and M/s. Adecco Flexione Workforce Solutions Private Limited.

21. Shri Harpreet Singh, Branch Manager, M/s Adecco India Private Ltd. SCO No.21-22, Sector 19-C, Chandigarh appeared as RW2 for respondent No. 2. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No.2.

22. In the cross-examination, he admitted that as per the agreement the petitioner had been engaged by respondent No. 2 and who had been sent for work to respondent No. 1. He further admitted that an appointment letter had been issued by them to the petitioner wherein it is mentioned that the petitioner will work for GVK. Volunteered that, it was issued as per the requirement of GVK. It was also clearly admitted by him that termination letter dated 20.10.2012 had been issued by them. He categorically admitted that after full and final settlement, the petitioner had been removed by them. He denied that there was no role of respondent No.1 to terminate the petitioner. He further denied that the petitioner had been removed by respondent No.2.

23. Ex. RW2/B is the copy of appointment letter dated 22.12.2010 of the petitioner.

24. Ex.RW2/C is the copy of letter dated 19.11.2012 regarding termination letter relating to the petitioner.

25. Ex.RW1/D is the copy of license dated 24.7.2012 pertaining to M/s Adecco India Pvt. Ltd.

26. Ex.RW2/E is the copy of the e-mail dated 14th August, 2013.

27. It is not disputed that respondent No. 1 had signed a memorandum of understanding with the Government of Himachal Pradesh, as per which respondent No. 1 had been permitted to take skilled manpower from a third agency. From the ocular and documentary evidence, as discussed above, it is apparent that pursuant to the said memorandum of understanding, respondent No.1 had entered into an agreement dated 10.8.2010 (Ex.RW1/C) with respondent No.2, whereby the manpower had been supplied to respondent No. 1 by respondent No. 2. Be it recorded here that respondent No. 2 is the area office.

28. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent No. 1 or that of respondent No. 2. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

29. In the case on hand, it was asserted by the petitioner that he was an employee of the respondents. Respondent No. 1 denied this fact and claimed that he was an employee of respondent No. 2. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between him and respondent No. 1. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent No. 1. Rather, respondent No. 2 tendered in evidence a copy of appointment letter of the petitioner as Ex. RW2/B. As per this document the petitioner had initially been appointed by respondent No. 2 as a Medical Emergency Technician on 10.2.2011. Then, as per the own pleaded case of respondent No. 2, the petitioner had been employed by it for doing the work for respondent No.1. It was also its case that termination/work completion letter had also been issued by it to the petitioner. In his substantive evidence, the petitioner clearly admitted that he had been issued the appointment letter by respondent No. 2. Shri Harpreet Singh (RW2) was categorical that the salary was being paid by them to the petitioner. From these admissions made by the petitioner and respondent No. 2, it is evident that he was appointed by respondent No. 2 and that he was being paid the salary by the said respondent only. Shri Daya Ram (RW1) was specific in his evidence that respondent No. 1 was neither having any authority nor concern with the employment and termination of the services of the petitioner. According to him, as per the agreement entered into between respondent No. 1 and respondent No. 2, it was only respondent No. 2 who was to deploy and migrate the manpower for respondent No. 1. A close scrutiny of the copy of agreement (Ex.RW1/C), which is an admitted document on the part of the respondents, would reveal that the manpower was to be deployed by respondent No. 2 for respondent No.1, for providing emergency services. Shri Harpreet Singh (RW2) was specific in his evidence that the services of casual/temporary employees was being taken for a fixed period of employment and that the same continued and ended with the project/work, for which they were employed. The petitioner had also been selected on the said basis for the post of Emergency

Medical Technician and had been deputed with respondent no.1. He was issued an appointment letter. While under cross-examination, he was categorical that the salary was being paid by them to the petitioner.

30. Then, as per the copy of letter of employment Ex.RW2/B dated 10.2.2011, it had been issued by respondent No. 2 in favour of the petitioner and that the same was accepted by the latter by appending his signature on it. This documentary evidence, coupled with the oral evidence, as discussed above, leaves no doubt in mind that the petitioner stood appointed and terminated by respondent No. 2 only.

31. Faced with the situation, it was then contended that as the petitioner was under the direct control and supervision of respondent no.1, he ought to be deemed to be a direct employee of respondent No. 1. This cannot be accepted. It has been laid down by the Hon'ble Supreme Court in case titled as ***International Airport Authority of India vs. International Air Cargo Workers Union and Anr., (2009) 13 SCC 374*** that if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but that would not make the worker a direct employee of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor. In the present case, as discussed above, the petitioner who was appointed as an Emergency Medical Technician by respondent No. 2, was to work under the directions, supervision and control of respondent No. 1, but his salary, as per the admission made by Shri Harpreet Singh (RW2) was being paid by respondent No. 2. His services stood terminated by respondent No. 2 only, by issuance of letter dated 18.10.2012, copy of which is placed on record as Ex.RW2/C. Therefore, the petitioner being an employee of respondent No. 2, the ultimate supervision and control lay with it, as it had decided where he was to work and how long he would work and subject to what conditions. He being sent to work under respondent No.1 by respondent No. 2, would only constitute secondary control by respondent No.1 and the primary control remained with respondent No. 2.

32. Our own Hon'ble High Court in case titled as ***Agya Ram vs. State of H.P., 2016 (sup.)Him.L.R. 2821*** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent No.1. No appointment letter issued by respondent No. 1 in his favour has been placed on record by the petitioner. Rather, as discussed above, he stood appointed vide an appointment letter issued by respondent No. 2 and that the salary was being paid to him by respondent No.2 only. Then, no grain of evidence has been led on record by the petitioner to demonstrate that the primary control and supervision over him lay with respondent No. 1 while discharging the official duties. In ***Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186***, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by respondent No.1 only and that he was working directly under its control and supervision, so he cannot be said to be an employee of respondent No. 1. Rather, it is apparent that he was an employee of respondent No. 2, being his contractor and who was having the primary control and supervision over him.

33. It was next contended for the petitioner that his services stood terminated illegally without serving him any notice as required under Section 25-F of the Act, particularly when he was having continuous service of one year anterior to the date of his termination. It was also claimed that persons junior to him were retained and fresh workers had been engaged by the respondents, which was violative of the provisions of Section 25-G and 25-H of the Act. Conversely, it was claimed for respondent No. 2 that the services of the petitioner had been engaged for a fixed period of employment *vide* letter of employment (Ex.RW2/B), therefore, the termination of his services does not fall within the ambit of term 'retrenchment', as defined in Section 2 (oo) of the Act. No doubt, as per the letter of employment, copy of which is placed on record as Ex. RW2/B, the term of appointment of the petitioner was valid for a period of one year from 10.2.2011 to 9.2.2012, but the fact remains that his services stood terminated by respondent No. 2 only on 18.10.2012. Although, it was claimed by respondent No. 2 that after 9.2.2012, the services of the petitioner had been extended by it from time to time under the scheme, but no such scheme or order extending the term of appointment of the petitioner has seen the light of the day. The onus lay on respondent No. 2 to establish on record that after 9.2.2012, time to time terms of appointment of the petitioner had been extended by way of contract(s). Strangely enough, no such order or contract has been placed and proved on record by respondent No. 2. True it is that initially the petitioner had been appointed as an Emergency Medical Technician for a fixed term of one year but, however, after the expiry of the said term of one year, he still continued in service. His services were not discontinued on 9.2.2012. Be it recorded at the risk of repetition, no order extending the term of appointment of the petitioner has been placed on record by respondent No. 2. Therefore, it is my humble opinion that no limitation was fixed regarding the period of employment of the petitioner after 9.2.2012. That being the position, it cannot be said that the termination of services of the petitioner did not fall within the scope of 'retrenchment' as envisaged under Section 2 (oo) of the Act.

34. There is no denial of the fact that *vide* agreement dated 10.8.2010 (Ex.RW1/C), respondent No. 2 had provided its services to engage the petitioner alongwith many other workers to respondent No. 1. Shri Harpreet Singh (RW2) clearly admitted that an agreement (Ex.RW1/C) had been entered into in between respondent No.1 and respondent No. 2. He was also categorical that as per this agreement the petitioner had been engaged by them. It is specifically stated by the petitioner that he had worked continuously *w.e.f.* 21.12.2010 till 19.11.2012 and that he had completed more than 240 days in each calendar year. His such testimony has remained unchallenged in the cross-examination. No iota of evidence has been led on record by the respondents to show that the petitioner had not completed more than 240 days in each calendar year. Shri Harpreet Singh (RW2) was categorical in his cross-examination that termination letter dated 18.10.2012 had been issued by them. Be it stated here that as per this letter (Ex.RW2/C) the services of the petitioner stood terminated by respondent No. 2. It is nowhere the case of respondent No. 2 that it had not engaged more than 100 workers for rendering services to respondent No. 1. Therefore, the provisions of Chapter VB of the Act are applicable to the present case. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

> "25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—
>
> (*c*) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
>
> (*d*) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette

(hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

35. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

36. Hence, this issue is decided accordingly.

Issue No. 2 :

37. Since, the termination of the services of the petitioner by respondent No. 2 has been held to be illegal and unjustified, as the provisions of Section 25-N of the Act had not been complied with, the question which now arises before this Court is as to what service benefits the petitioner is entitled to. From the ocular evidence led on record by the parties, it is clear that the contract in between respondent No. 1 and respondent No. 2 stands expired. Shri Rajneesh Kumar (PW1) categorically admitted while under cross-examination that now the contract in between respondent No. 1 and respondent No. 2 has come to an end. So has also been admitted by Shri Daya Ram (RW1). Shri Harpreet Singh (RW2) was also specific in his chief-examination that now the agreement in between respondent No. 1 and respondent No. 2 stands terminated. That being the position, it would not be appropriate for this Court to pass an order for reinstatement of the petitioner in the present case, even though his termination has been proved to be illegal and unjustified, as respondent No. 2 is no more providing any manpower and the services in the project, where the petitioner had earlier been engaged. It has been laid down by the Hon'ble Supreme Court in ***Jagbir Singh vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327*** that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. It was also observed that compensation instead of reinstatement would meet the ends of justice. Similar is the view taken by the Hon'ble Supreme Court in case titled ***Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal and others vs. 2010 LLR 677.*** Taking into account the facts and circumstances of this case and in view of the aforesaid binding precedents of the Hon'ble Supreme Court, the ends of justice would be met, if a lump sum compensation is awarded to the petitioner. Consequently, the petitioner is entitled to receive appropriate compensation from respondent No. 2. Since the services of the petitioner had been terminated in contravention of the prescribed procedure of the Act, therefore, he is entitled to a lump sum compensation quantified at ₹50,000/-. This issue is decided accordingly.

Issues No.3, 4 and 6 :

38. Not pressed.

Issues No.5 and 7 :

39. In view of my findings on issues no.1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as the cause of action to file and maintain the present petition. Hence, both these issues are answered in the negative and are decided against the respondents.

Issue No.8 :

40. No evidence of estoppel has been led by the respondents. Hence, this issue is answered in the negative and is decided against the respondents.

Relief :

41. In the light of what has been discussed hereinabove while recording the findings on issues *supra,* respondent No. 2 is hereby directed to pay a compensation of `50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent 2 to the petitioner within four months from the date of receipt of Award failing which it shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 244/2014

Date of Institution : 18.7.2014

Date of Decision : 29.02.2020

Shri Hem Raj s/o Shri Jagdish, r/o Village Panjail Khurd, P.O. Sikroha, Tehsil Sadar, District Bilaspur, H.P. . .*Petitioner.*

Versus

1. M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211.

2. M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali-160071 (Area Office) . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent No. 1 : Sh. Rajat Sahotra, Adv.

For the Respondent No. 2 : Sh. Manish Katoch, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Hem Raj s/o Sh. Jagdish, Village-Panjail Khurd, P.O. Sikroha, Tehsil Sadar, Distt. Bilaspur, H.P. who was employed as Driver during December, 2010 by the employer, (i) M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.) employed through (ii) M/s Adecco Flexi One Workforce Solution Pvt. Ltd., C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli-160071 (Area Office) *w.e.f.* 19.11.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation and from which date, the above workman is entitled to from the above Employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a Driver/Pilot by respondents No. 1 and 2 on 23.10.2010 and that he had worked as such uptil 19.11.2012. On 19.12.2012, his services had orally been terminated without any reason and notice, which amounts to unfair labour practice. He issued demand notice. State Government after the receipt of the failure report from the Conciliation Officer, made the present reference to this Court. The petitioner had worked regularly with the respondents for more than 240 days in a calendar year. He was not given the salary and benefits as per the agreement entered into between the respondents and the State Government. After his retrenchment new workers have been engaged. He was not provided an opportunity of re-engagement by the respondents. No prior permission had been obtained from the appropriate Government by the respondents before retrenching him. The respondents had violated the provisions of 25-F (a), 25-F (b), 25-A, 25-C, 25-E and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). They had not followed the principle of 'last come first go'. The petitioner is still unemployed. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondents appeared. Respondents No.1 and 2 filed separate replies.

4. The petition was contended by respondent no.1, taking preliminary objections regarding lack of maintainability, locus standi, cause of action, suppression of material facts and that the petitioner has not come to the Court with clean hands and that the petition was bad for mis-joinder of party. The contents of the petition were denied on merits. It was asserted that if the petitioner was appointed, he was under the employment of respondent No.2. Respondent No.1 was neither having any authority nor concern with the employment and termination of services of the petitioner. As per para 11 of the agreement entered into between respondents No. 1 and 2, respondent No. 1 was not responsible either for the employment of the workers or for any claim, charges, demands made or raised by them during their employment. As per para No. 2 of the agreement, Adecco was to deploy and migrate the manpower resources for respondent No. 1. Paras 4 and 5 of the agreement restricted the liability of respondent No. 1. The letter of appointment, transfer and termination, all have been issued by Adecco. Respondent No.1 was not having the power to appoint or terminate the services of workers employed by respondent No. 2. It was having no control over the employment of the petitioner. By denying the other averments of the petition, it was claimed that the petition in hand be dismissed.

5. Respondent No. 2 took preliminary objections regarding lack of maintainability, estoppel, locus standi, cause of action and that the petitioner had not come to the Court with clean hands and that respondent No. 2 was entitled to special cost under Section 35A of Code of Civil Procedure as the petition was frivolous and vexatious. The contents of the petition were denied on merits. However, it was admitted that the petitioner was employed as a Driver by respondent No. 2. It was asserted that he had been engaged for doing the work of respondent No. 1, which had signed a Memorandum of Understanding with the State of Himachal Pradesh. Now the agreement between respondents No. 1 & 2 stands terminated. It was specifically denied that the services of the petitioner had been terminated illegally. It has been claimed that he had been hired on fixed term contract basis as per the need base requirement. Respondent No.2 had duly issued termination/work completion letter to the petitioner in tune of the terms and conditions of the fixed term appointment letter issued to him. Respondent No. 2 had already paid to him salary for the period for which he had rendered the services. As per practice, being medical emergency services the employee is to work in a general shift of 12 hours with a two hours recess. One day off is allowed to a worker, on his attending extra duty hours. The contract of respondents No. 1 & 2 stands terminated but, however, the former is still providing services in the State of Himachal Pradesh. Respondent No. 2 also prayed that petition be dismissed.

6. While filing the rejoinder the petitioner controverted the averments made in the replies and reiterated those in the statement of claim.

7. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 06.4.2016:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 19-11-2012 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR. 1&2*

4. Whether the petitioner has not approached the Court with clean hands as alleged? . .*OPR. 1&2*

5. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR. 1&2*

6. Whether claim petition is bad for mis-joinder of necessary party as alleged? . .*OPR.1*

7. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR. 1&2*

8. Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . .*OPR. 2*

Relief.

8. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

9. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondents heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly.
Issue No. 2	: Entitled to lump sum compensation of ₹50,000/- (Fifty thousand) only.
Issue No. 3	: Not pressed
Issue No. 4	: Not pressed
Issue No. 5	: No
Issue No. 6	: Not pressed
Issue No. 7	: No
Issue No. 8	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No.1:

11. As per the petitioner, he had been engaged as a Driver/Pilot by the respondents and had worked continuously *w.e.f.* 23.10.2010 till 19.11.2012, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondents on the same post and with all service benefits including full back wages.

12. Per contra, respondent No. 1 contended that as the petitioner was not its employee, so there is no relationship of employee and employer between them. It was also claimed that the petitioner was an employee of respondent No. 2 and he had been deployed with respondent No. 1 under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent No.1, so it was not liable to reinstate the petitioner in service.

13. It was claimed by respondent No. 2 that it was engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an agreement in between respondent No. 1 and respondent No. 2 to provide workers, so the petitioner along-with 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him.

14. In support of his case, Shri Hem Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

15. In the cross-examination, he admitted that his interview was taken by respondent No.2 and that the appointment letter had also been issued to him by the said respondent. He was also categorical that his appointment was on contractual basis with respondent No. 2. Further, he admitted that his termination letter had been issued by Adecco Company. It was also clearly admitted by him that now the contract between respondent no.1 and respondent No. 2 has come to an end.

16. Mark-A is the copy of order dated 09.4.2015 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1583 of 2014 along-with CWP No.6406/2014.

17. Conversely, respondent No.1 examined Shri Daya Ram, HR (authorized person) GVK, EMRI, Dharampur, as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No.1.

18. In the cross-examination, he admitted that agreement dated 10.8.2010 had been entered into between them and respondent No. 2. He was also categorical that the manpower was to be supplied by the latter to the former.

19. Ex. RW1/B is the copy of authority letter dated 06.7.2017.

20. Ex.RW1/C is the copy of Agreement dated 10.8.2010 executed in between GVK Emergency Management And Research Institute and M/s. Adecco Flexione Workforce Solutions Private Limited.

21. Shri Harpreet Singh, Branch Manager, M/s Adecco India Private Ltd. SCO No. 21-22, Sector 19-C, Chandigarh appeared as RW2 for respondent No. 2. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by respondent No. 2.

22. In the cross-examination, he admitted that as per the agreement the petitioner had been engaged by respondent No. 2 and who had been sent for work to respondent No. 1. He further admitted that an appointment letter had been issued by them to the petitioner wherein it is mentioned that the petitioner will work for GVK. Volunteered that, it was issued as per the requirement of GVK. It was also clearly admitted by him that termination letter dated 20.10.2012 had been issued by them. He categorically admitted that after full and final settlement, the petitioner had been removed by them. He denied that there was no role of respondent No.1 to terminate the petitioner. He further denied that the petitioner had been removed by respondent No.2.

23. Ex. RW2/B is the copy of letter dated 19.8.2012 relating to the petitioner.

24. Ex.RW2/C is the copy of letter dated 19th August, 2012 pertaining to Shri Rajender, EMT.

25. Ex.RW1/D is the copy of license dated 24.7.2012 pertaining to M/s Adecco India Pvt. Ltd.

26. Ex.RW2/E is the copy of the e-mail dated 14th August, 2013.

27. It is not disputed that respondent no.1 had signed a memorandum of understanding with the Government of Himachal Pradesh, as per which respondent no.1 had been permitted to take skilled manpower from a third agency. From the ocular and documentary evidence, as

discussed above, it is apparent that pursuant to the said memorandum of understanding, respondent No.1 had entered into an agreement dated 10.8.2010 (Ex.RW1/C) with respondent No.2, whereby the manpower had been supplied to respondent No. 1 by respondent No. 2. Be it recorded here that respondent No. 2 is the area office.

28. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent No.1 or that of respondent No. 2. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

29. In the case on hand, it was asserted by the petitioner that he was an employee of the respondents. Respondent No. 1 denied this fact and claimed that he was an employee of respondent No. 2. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between him and respondent No.1. No document has been placed and exhibited on record by the petitioner to show that he was an employee of respondent No.1. However, it is the own pleaded case of respondent No. 2 that the petitioner was employed by this respondent. Shri Harpreet Singh (RW2) categorically admitted in his cross-examination that the petitioner was employed by them and that an appointment letter was also issued to him by them only. It is also the case of respondent No.2 that termination/work completion letter had also been issued by it to the petitioner. In his substantive evidence, the petitioner clearly admitted that he had been issued the appointment letter by respondent No.2. Shri Harpreet Singh (RW2) was categorical that the salary was being paid by them to the petitioner. In view of the above, it is evident that the petitioner was appointed by respondent no.2 and that he was being paid the salary by the said respondent only. Shri Daya Ram (RW1) was specific in his evidence that respondent No. 1 was neither having any authority nor concern with the employment and termination of the services of the petitioner. According to him, as per the agreement entered into between respondent No. 1 and respondent No. 2, it was only respondent No. 2 who was to deploy and migrate the manpower for respondent No. 1. A close scrutiny of the copy of agreement (Ex.RW1/C), which is an admitted document on the part of the respondents, would reveal that the manpower was to be deployed by respondent No. 2 for respondent No.1, for providing emergency services. Shri Harpreet Singh (RW2) was specific in his evidence that the services of casual/temporary employees was being taken for a fixed period of employment and that the same continued and ended with the project/work, for which they were employed. The petitioner had also been selected on the said basis for the post of Driver/Pilot and had been deputed with respondent No.1. He was issued an appointment letter. While under cross-examination, he was categorical that the salary was being paid by them to the petitioner.

30. Then, it has also been specifically admitted by Shri Harpreet Singh (RW2) that the services of the petitioner were terminated by them only *vide* a notice dated 20.10.2012. The pleadings of respondent No. 2, coupled with the oral evidence, as discussed above, leaves no doubt in mind that the petitioner stood appointed and terminated by respondent No. 2 only.

31. Faced with the situation, it was then contended that as the petitioner was under the direct control and supervision of respondent No.1, he ought to be deemed to be a direct employee of respondent No.1. This cannot be accepted. It has been laid down by the Hon'ble Supreme Court in case titled as ***International Airport Authority of India vs. International Air Cargo***

Workers Union and Anr., (2009) 13 SCC 374 that if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but that would not make the worker a direct employee of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor. In the present case, as discussed above, the petitioner who was appointed as a Driver/Pilot by respondent No. 2, was to work under the directions, supervision and control of respondent No.1, but his salary, as per the admission made by Shri Harpreet Singh (RW2) was being paid by respondent No. 2. His services stood terminated by respondent No. 2 only by issuance of letter dated 20.10.2012, as per the specific admission made by Shri Harpreet Singh (RW2). Therefore, the petitioner being an employee of respondent No.2, the ultimate supervision and control lay with it, as it had decided where he was to work and how long he would work and subject to what conditions. He being sent to work under respondent no.1 by respondent No. 2, would only constitute secondary control by respondent No. 1 and the primary control remained with respondent No. 2.

32. Our own Hon'ble High Court in case titled as ***Agya Ram*** *vs.* ***State of H.P., 2016 (sup.)Him.L.R. 2821*** has held that it is for the petitioners to prove by leading evidence to demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent No.1. No appointment letter issued by respondent No.1 in his favour has been placed on record by the petitioner. Rather, as discussed above, he stood appointed *vide* an appointment letter issued by respondent No. 2 and that the salary was being paid to him by respondent No. 2 only. Then, no grain of evidence has been led on record by the petitioner to demonstrate that the primary control and supervision over him lay with respondent No. 1 while discharging the official duties. In ***Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186***, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by respondent no.1 only and that he was working directly under its control and supervision, so he cannot be said to be an employee of respondent No. 1. Rather, it is apparent that he was an employee of respondent No. 2, being his contractor and who was having the primary control and supervision over him.

33. It was next contended for the petitioner that his services stood terminated illegally without serving him any notice as required under Section 25-F of the Act, particularly when he was having continuous service of one year anterior to the date of his termination. It was also claimed that persons junior to him were retained and fresh workers had been engaged by the respondents, which was violative of the provisions of Section 25-G and 25-H of the Act. Conversely, it was claimed for respondent No.2 that the services of the petitioner had been engaged for a fixed period of employment, therefore, the termination of his services does not fall within the ambit of term 'retrenchment', as defined in Section 2 (oo) of the Act. As per the petitioner he had initially been appointed on 21.12.2010. It was suggested by respondent No.2 to the petitioner that his appointment was for a period of one year. He admitted the suggestion. Meaning thereby that the term of employment of the petitioner was valid for a period of one year from 21.12.2010 to 20.12.2011. However, as per the own admission made by Shri Harpreet Singh (RW2) in his substantive evidence, the services of the petitioner stood terminated by respondent No.2 only on 20.10.2012. It was contended for respondent No. 2 that after 20.12.2011,

the services of the petitioner had been extended by it from time to time under the scheme, but no such scheme or order extending the term of appointment of the petitioner has seen the light of the day. The onus lay on respondent No.2 to establish on record that after 20.12.2011, time to time terms of appointment of the petitioner had been extended by way of contract(s). Strangely enough, no such order or contract has been placed and proved on record by respondent No.2. True it is that initially the petitioner had been appointed as a Driver/Pilot for a fixed term of one year but, however, after the expiry of the said term of one year, he still continued in service. His services were not discontinued on 20.12.2011. Be it recorded at the risk of repetition, no order extending the term of appointment of the petitioner has been placed on record by respondent no.2. Therefore, it is my humble opinion that no limitation was fixed regarding the period of employment of the petitioner after 20.12.2011. That being the position, it cannot be said that the termination of services of the petitioner did not fall within the scope of 'retrenchment' as envisaged under Section 2 (oo) of the Act.

34. There is no denial of the fact that *vide* agreement dated 10.8.2010 (Ex.RW1/C), respondent No.2 had provided its services to engage the petitioner alongwith many other workers to respondent No.1. Shri Harpreet Singh (RW2) clearly admitted that an agreement (Ex.RW1/C) had been entered into in between respondent No.1 and respondent No.2. He was also categorical that as per this agreement the petitioner had been engaged by them. It is specifically stated by the petitioner that he had worked continuously *w.e.f.* 21.12.2010 till 19.11.2012 and that he had completed more than 240 days in each calendar year. His such testimony has remained unchallenged in the cross-examination. No *iota* of evidence has been led on record by the respondents to show that the petitioner had not completed more than 240 days in each calendar year. Shri Harpreet Singh (RW2) was categorical in his cross-examination that termination letter dated 20.10.2012 had been issued by them to the petitioner. It is nowhere the case of respondent No.2 that it had not engaged more than 100 workers for rendering services to respondent no.1. Therefore, the provisions of Chapter VB of the Act are applicable to the present case. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

> "25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—
>
> (*a*) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
>
> (*b*) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

35. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

36. Hence, this issue is decided accordingly.

Issue No.2 :

37 Since, the termination of the services of the petitioner by respondent No. 2 has been held to be illegal and unjustified, as the provisions of Section 25-N of the Act had not been complied with, the question which now arises before this Court is as to what service benefits the petitioner is entitled to. From the ocular evidence led on record by the parties, it is clear that the contract in between respondent No. 1 and respondent No. 2 stands expired. Shri Hem Raj (PW1) categorically admitted while under cross-examination that now the contract in between respondent No.1 and respondent No.2 has come to an end. So has also been admitted by Shri Daya Ram (RW1). Shri Harpreet Singh (RW2) was also specific in his chief-examination that now the agreement in between respondent No.1 and respondent No.2 stands terminated. That being the position, it would not be appropriate for this Court to pass an order for reinstatement of the petitioner in the present case, even though his termination has been proved to be illegal and unjustified, as respondent No.2 is no more providing any manpower and the services in the project, where the petitioner had earlier been engaged. It has been laid down by the Hon'ble Supreme Court in ***Jagbir Singh vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327*** that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. It was also observed that compensation instead of reinstatement would meet the ends of justice. Similar is the view taken by the Hon'ble Supreme Court in case titled ***Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal and others vs. 2010 LLR 677.*** Taking into account the facts and circumstances of this case and in view of the aforesaid binding precedents of the Hon'ble Supreme Court, the ends of justice would be met, if a lump- sum compensation is awarded to the petitioner. Consequently, the petitioner is entitled to receive appropriate compensation from respondent No.2. Since the services of the petitioner had been terminated in contravention of the prescribed procedure of the Act, therefore, he is entitled to a lump sum compensation quantified at ₹50,000/-. This issue is decided accordingly.

Issues No. 3, 4 and 6 :

38. Not pressed.

Issues No.5 and 7 :

39. In view of my findings on issues no.1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as the cause of action to file and maintain the present petition. Hence, both these issues are answered in the negative and are decided against the respondents.

Issue No. 8 :

40. No evidence of estoppel has been led by the respondents. Hence, this issue is answered in the negative and is decided against the respondents.

Relief :

41. In the light of what has been discussed hereinabove while recording the findings on issues supra, respondent no.2 is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent 2 to the petitioner within four months from the date of receipt of Award failing which it shall be liable to pay interest

@ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 41/2018

Date of Institution : 19.4.2016

Date of Decision : 29.02.2020

Shri Hoshiyar Singh s/o Shri Babu Ram, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Shri Hoshiyar Singh s/o Shri Babu Ram, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during December, 1988 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated 23.07.2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of after about 23 years in raising the industrial dispute what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. After that, a corrigendum reference has been received from the appropriate Government in the month of August, 2019, which reads thus:

> "Whereas, a reference has been made to the Ld. Labour Court-*cum*-Industrial Tribunal, Dharamshala, Dsitrict Kangra, H.P. *vide* this office notification of even No. dated 27.03.2018 for legal adjudication. However, inadvertently the correct facts could not be mentioned about father's name of the workman in the said notification. Therefore, the father's name of the workman may be read as "Shri Hoshiyar Singh s/o Shri Sadho Ram" instead of "Shri Hoshiar Singh s/o Shri Babu Ram" as alleged by workman".

3. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in the year 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bharari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

4. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the month of February, 1986 and that he had worked intermittently uptil December, 1988 and thereafter had left the job of his own sweet will. It is denied that the petitioner had worked from May, 1986 uptil June, 1990. It is denied that the petitioner had completed 240 days in each calendar year. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial No.1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

5, The case was listed for filing of rejoinder by the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte.*

6. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

> "(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

7. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

> "10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party."

8. Rule 22 reads thus:—

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

9. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

10. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

11. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

12. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services in the month of December, 1988 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

13. The reference is answered in the aforesaid terms.

14. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of February, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

SPECIFIC NOTIFICATION

FINANCE DEPARTMENT

NOTIFICATION

Shimla-171002, *the* 22*nd October,* 2020

No. Fin-2-C(12)-1/2020(I).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (securities) of 8.5-year tenure for an aggregate amount of **Rs. 500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (*i*) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

   (*ii*) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai-400 001 by auction in the manner as prescribed in paragraph 6.1 of the

General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock upto 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure–II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **October 27, 2020**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **October 27, 2020**.

(*a*) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10:30 A.M. and 11:30 A.M.

(*b*) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **October 28, 2020**.

Method of Payment :

6. Successful bidders will make payments on **October 28, 2020** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort) /New Delhi.

Tenure :

7. The Stock will be of **8.5** year tenure. The tenure of the Stock will commence on **October 28, 2020.**

Date of Repayment :

8. The loan will be repaid at par on **April 28, 2029.**

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **April 28 and October 28**.

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,
Sd/-
Addl. Chief Secretary to the Government of Himachal Pradesh
Finance Department.

SPECIFIC NOTIFICATION
FINANCE DEPARTMENT

NOTIFICATION

Shimla-171002, *the* 22*nd October*, 2020

No. Fin-2-C(12)-1/2020(II).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (securities) of **9.5** year tenure for an aggregate amount of **Rs. 500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (*i*) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

(*ii*) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock upto 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure – II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai- 400 001 on **October 27, 2020**. Bids for the auction should be submitted in

electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **October 27, 2020**.

(*a*) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10:30 A.M. and 11:30 A.M.

(*b*) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **October 28, 2020**.

Method of Payment :

6. Successful bidders will make payments on **October 28, 2020** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/ New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort) /New Delhi.

Tenure :

7. The Stock will be of **9.5**-year tenure. The tenure of the Stock will commence on **October 28, 2020.**

Date of Repayment :

8. The loan will be repaid at par on **April 28, 2030.**

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **April 28 and October 28**.

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,
Sd/-
Addl. Chief Secretary to the Government of Himachal Pradesh
Finance Department.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है